

Unaccompanied Minors from Mexico and Central America:
A System of Empty Protections in the United States

Presented to the Center for the Study of Ethnicity and Race at Columbia University

Faculty Advisor: Professor Mae Ngai

Secondary Reader: Professor Elizabeth Ouyang

Seminar Advisor: Ian Shin

Armando Lozano

April 17, 2015

Acknowledgments

I would first like to thank my family and friends—especially my parents. This thesis is very much symbolic of four years of hard work and adjustment to Columbia University. Without your support, love, and guidance I would have never made it this far. Next, I would like to express my gratitude to my faculty advisor, Professor Mae Ngai, for being enthusiastic about my project and helping me every step of the way. Without her support I would not have been able to complete my research. I would also like to thank Professor Ouyang. Her passion in the classroom motivated me to learn more about the injustices prevalent in immigration policy, and she taught me that, through activism, things could change for the better. In addition, I want to extend my thanks to Ian Shin. Thank you for the work you have put into our seminar and for taking the time to provide feedback and answer all of my questions. Your dedication to the cohort has helped me immensely throughout the thesis process. Finally, I want to give a shout out to the Center for the Study of Ethnicity and Race and Josephine & Teresa. The Center has allowed me to explore my passions while pushing my academic limits, and for that I will always be thankful.

Table of Contents

Introduction-----	Pg. 4
Historical Context and Reasons for the "Surge"	
Overview of Legal Processes for Unaccompanied Minors	
I: <i>A Legal Conception Centered on Procedural Protection for Unaccompanied Minors</i> ----	Pg. 15
The Origins of a Legal Conception for Unaccompanied Minors	
Legal Conception of Procedural Protection Furthered through USCIS Policies	
II: <i>No More Protection? Contradictions between Procedural and Substantive Realities</i> --	Pg. 29
Profile of Unaccompanied Minors from Mexico and Central America	
Asylum: Gang Violence	
SIJS: Violence in the Home	
Non-Protection-Related Claims: Family Reunification/Opportunity	
The Realities of Protection through Statute for Unaccompanied Minors in the U.S.	
Appointed Legal Representation	
Interaction between Pathways for Relief and Legal Representation	
Conclusion: Meaningful Reform through Legislation and Legal Representation-----	Pg. 63
Works Cited-----	Pg. 69

“Now, with respect to issues of law, which include questions of eligibility for relief, those are governed by the INA and insular regulations... The concept of the best interest of the child does not negate the statute and cannot provide a basis for relief that is not sanctioned by the law. Rather, for me as a judge, the concept of the best interest of the child is something I would use at my discretion to make sure that a child appropriate environment is in place...[I] endeavor to meet the best interests of the child through the process.”

-Judge Virna Wright, New York Immigration Court

In December 2013, Giovanni, a 17-year-old from El Salvador, traveled alone to the United States to reunite with his mother, who lived in Chicago, and escape from members of the notorious MS-13 gang who had begun to threaten him. According to Giovanni, these gangs targeted him because, as a male private school student, they believed he could smuggle weapons and drugs with little suspicion. Stalking him after school one day, gang members beat Giovanni and threatened to kill his family if he did not join their ranks. After Giovanni told his mother what had happened, she paid for a “coyote” to smuggle him into the U.S. Once he crossed the Rio Grande, Giovanni gave himself up to Border Patrol in the hopes of gaining asylum.¹ His case is still pending as he lives with his mother. Giovanni’s story is just one of the thousands of stories of minor immigrants from Mexico and Central America who traveled alone to the U.S. in what the media has dubbed the “border surge.”

The migration of unaccompanied minors to the United States is not a new phenomenon. In fact, the emergence of “unaccompanied minors” (UAMs) as an immigrant group dates back to WWII, and organizations such as the U.S. Conference of Catholic

¹ “Who Counts as a Refugee in U.S. Immigration Policy—And Who Doesn’t.” *The Nation*. 11 August 2014.

Bishops (USCCCB) served this population in as early as the 1980s.² Since 2011, however, there has been a major increase in the migration of minor immigrants from Central America, as well as a continuous influx from Mexico. According to U.S. Customs and Border Protection (CBP), between FY2011 and FY2014 there was a 12-fold increase in minors without parents from what is known as the “Northern Triangle,” which includes El Salvador, Guatemala and Honduras (from 3,933 to 51,705). In addition, during the same period, there was a slight increase in apprehensions of minors from Mexico (from 11,768 to 15,634).³ Furthermore, this “surge” is the first time the U.S. has had to deal with a vast number of immigrant youth coming across the border outside of formal refugee programs.⁴ Indeed, the spike in this type of immigration has prompted concern across the U.S., with some politicians deeming the situation a “disaster”⁵ and others a “humanitarian crisis.”⁶

The increase in unaccompanied minors from these four countries over the past several years has challenged the U.S. immigration system. Not only has this influx created enormous legal and humanitarian difficulties, but it has also prompted changes in the United States Citizenship and Immigration Services (USCIS) procedures for interacting with minor immigrants going through the immigration system. In this paper, I aim to analyze the laws, policies, and procedures that pertain to immigrant youth going through U.S. immigration courts. In doing so, I will contrast what I argue are the *legal conception* and *substantive reality* surrounding the treatment of these immigrants. By legal conception, I

² “The United States Unaccompanied Refugee Minor Program.” United States Conference of Catholic Bishops, 2013. Pg. 2.

³ “Southwest Border Unaccompanied Alien Children.” U.S. Customs and Border Protection.

⁴ Steinbock, Daniel. “The Admission of Unaccompanied Minors to the U.S.” 1989.

⁵ “An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors.” U.S. House of Representatives Judiciary Committee Hearing. 25 June 2015.

⁶ “Response to the Influx of Unaccompanied Alien Children Across the Southwest Border.” Presidential Memorandum. 02 June 2014.

mean the government's definition, treatment, and discourse about "unaccompanied alien children" that inform protections for this population in the courtroom and throughout removal proceedings.⁷ Overall, I argue that the legal conception surrounding this group is centered on procedural safeguards. These procedural protections, however, do not change how actual outcomes for minor immigrants are adjudicated. Indeed, there is a vast difference between protecting this group *procedurally* and the *substance* of how immigration law is enforced. Although both are necessary to ensure that unaccompanied minor immigrants get the protections they deserve, the former is by no means sufficient without the latter. Thus, there must be a change in immigration law to allow for fair and just outcomes of removal proceedings for unaccompanied minors.

To this end, this paper will show the contradictions between the procedural protections afforded to minor immigrants and the substantive legal reality that unfolds in courtrooms across the country. According to the United Nations High Commissioner for Refugees (UNHCR), Central American and Mexican children who leave their countries for the U.S. find "significant gaps in the existing protection mechanisms..." However, "the extent of these gaps is not fully known because much of what happens to these children is not recorded or reported anywhere."⁸ By using court observations, interviews with attorneys, government officials and non-profit organizations, and preliminary data on outcomes for minor immigrants in U.S. courts, I plan to paint a picture of the gaps between the procedural protections and substantive realities of unaccompanied minors interacting with

⁷ While the legal term for unaccompanied minor immigrants is "unaccompanied alien children," I will use the terms immigrant minor or minor immigrant to refer to this population, as I feel they better portray this diverse group of immigrants that range in age from 2 months to 18 years of age.

⁸ "Children On The Run." UNHCR, July 2014. Pg. 11.

immigration law. In doing so, I contend that the current system is one that is full of “empty protections” and is incapable of truly protecting minor immigrants without major reforms.

Historical Context and Reasons for the Surge

In order to provide insight into the legal conception of child immigrants from Mexico and Central America, it is necessary to understand that violence and poverty, among other factors, are integral in causing immigrants to leave their home country. Overall, “at the very core of what could be called root causes for children leaving these four countries and coming to the U.S. are issues of entrenched poverty and deep lack of meaningful opportunity... This is compounded by...the long-term effects of years of civil war and repression and the long-standing climate of violence engendered by this strife.”⁹ In its report “Children On The Run,” the UNHCR details the major reasons unaccompanied minors leave home, including push factors such as violence, threats by criminal actors, abuse in the home, and little economic opportunity. There are also pull factors. These include children leaving to reunify with family or to chase the “American dream.”

Most accounts that the UNHCR highlight, however, include children fleeing instances of violence, like *Giovani*. According to its report, minors describe a failure of basic protection by local governments after being harassed by gangs with violence and threats against family members.¹⁰ Studies by Kids in Need of Defense (KIND), a legal non-profit that works with minor immigrants, corroborate the findings of the UNHCR. KIND finds gang violence, domestic abuse, extreme poverty, and weak infrastructure to be major reasons minors are leaving Mexico and the Northern Triangle.¹¹ According to its 2013 report, KIND

⁹ Ibid. Pg. 24

¹⁰ Ibid. Pg. 10.

¹¹ See Generally: “The Time Is Now” & “A Treacherous Journey.” KIND. Feb 2013/Feb. 2014.

details, “nearly 84% of children referred to KIND come from Guatemala, El Salvador, Honduras, and Mexico...[and most of] these children said that violence was the main reason they left their communities for the United States.”¹² Specifically, they report that nearly 30% of minors from these areas say they “migrated because their refusal to join a gang made them or their family a target” of violence.¹³ Further, 26% “reported fleeing their home country due to severe abuse of a variety of forms” by caretakers, “most often perpetuated by their parents or guardian.”¹⁴ Thus, it is necessary to see that violence is a major reason many of the current wave of minors are coming to the U.S.

However, though violence and diminished protection seem to affect many children coming from these areas, the majority of minors have multiple reasons for leaving. Indeed, scholars have noted that “young migrants [are] driven to cross borders because of a complex, mixed set of factors,” some of which may be “unrelated to fear of persecution.”¹⁵ This presents a distinct problem for the U.S. government, because it may face contradictory prerogatives for immigration enforcement. Though as citizens “we view the state as having a protective obligation toward vulnerable children in its role as *parens patriae*, parent of the nation,” we also “expect the state to protect us from the threatening, unruly, and uncontrolled outsiders, even if they are children.”¹⁶ This dilemma leads to the enforcement of legislation that keeps out minor immigrants who are coming to the United States for reasons that are ineligible for immigration relief, such as fleeing economic hardship or migrating to reunify with a non-citizen family member. Fleeing violence, economic

¹² “The Time Is Now.” KIND. Feb. 2013. Pg. 16.

¹³ Ibid. Pg. 18.

¹⁴ Ibid. Pg. 27.

¹⁵ Bhabha, Jacqueline. *Child Migration & Human Rights in a Global Age*. 2014. Pg. 5.

¹⁶ Ibid. Pg. 11

hardship, or leaving for familial purposes, however, are very related, especially given the extent of the economic and political interaction between the U.S. and Latin America.

Considering the history of U.S. intervention in Latin America, it is ironic that reports on the immigration of minors from Mexico and Central America cite violence and underdevelopment as major factors prompting travel to the United States. In *Harvest of Empire*, journalist Juan Gonzalez describes the bond between the United States and Latin America as one “directly connected to the growth of a U.S. empire.”¹⁷ Indeed, Gonzalez articulates how throughout the 20th century the United States continuously intervened in Latin American affairs, which in turn “allowed U.S. banks and corporations to gain control over key industries in various countries,” pushing those countries “deeper into debt and dependence.”¹⁸ Not only did this debilitate the formation of strong infrastructure, but it also contributed to migratory flows of labor from the south to the industrial north—a flow that caused the separation of families and continues to affect movements today.

In the case of Mexico, there is a long history of U.S. foreign policy that has led to the vast migration of Mexican nationals to the United States. In *Those Damned Immigrants*, Ediberto Román discusses the connection between Mexico and the United States as it pertains to labor. He shows how Mexicans were exempt from the quotas in the 1924 National Origins Act because they were in demand to fill unskilled work in the 1920s.¹⁹ The U.S. repeatedly brought in labor from Mexico only to send them back when economic conditions declined. The cyclical nature of encouragement followed by expulsion led to difficulties for Mexicans trying to obtain citizenship and, along with the codification of

¹⁷ González, Juan. *Harvest of Empire: A History of Latinos in America*. 2000. Pg. XIV.

¹⁸ Ibid. Pg. 59.

¹⁹ Román, Ediberto. *Those Damned Immigrants*. New York University Press, 2013. Pg. 117.

migration, helped create a new “subject barred from citizenship and without rights”—the undocumented Mexican immigrant.²⁰ Combined with the taking of the southwestern U.S. from Mexico in the Mexican Cession, these labor movements created a lasting tie between the two countries through both economic dependence and family ties.

In contrast, Central Americans had a different relationship with the U.S. that prompted migration. As Gonzalez articulates, “Central Americans were a negligible presence in the U.S. until the final decades of the twentieth century.” Gonzalez continues, “this sudden exodus did not originate with some newfound collective desire for the material benefits of U.S. society; rather, vicious civil wars...forced the region’s people to flee”—especially from El Salvador and Guatemala.²¹ Further, these wars were conflicts “for which our own [U.S.] government bore much responsibility” through actions in the region throughout the 20th century.²² The first movements of Central Americans to the U.S. undoubtedly influences the present movement of minors, as family members are now in the U.S. to take care of them once they arrive. Furthermore, the violence that plagued Central America during civil wars still continues to push people to leave to this day.

Along with Central America, Mexico has recently become a hotbed for instability and violence. As war scholar Robert Bunker argues in *Criminal Insurgencies in Mexico and the Americas*, “in Mexico, the stakes are higher than they have ever been where the society has seen an explosion of organized crime in the past 15 years.”²³ With the rise in crime has come a surge in violence, which in turn continues to push immigrants to flee for refuge in

²⁰ Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton, 2004. Pg. 4.

²¹ González, Juan. *Harvest of Empire: A History of Latinos in America*. New York 2000. Pg.129.

²² Ibid. Pg. 138.

²³ Bunker, Robert J. *Criminal Insurgencies in Mexico and the Americas*. New York: 2013. Pg. 6.

the U.S. Again much of this instability originates from this nation's actions, as the U.S. is the major contributor to drug violence in Mexico and Central America by "providing the bulk of the revenues to the Mexican gangs" and cartels and instituting failed drug policies.²⁴

This summary of decades of U.S. influence in Latin America and its relevance to the issue at hand should inform our responses to this surge of unaccompanied minors from Mexico and Central America. Considering that the majority of minor immigrants interviewed by KIND and the UNHCR detail a lack of infrastructure, little protection from criminal and domestic violence, a longing for better economic opportunities, and family reunification as causes for them to leave, it is important to draw a link between U.S. influence in these areas and the current situation minors find themselves in at home.

As Gonzalez and Román claim, economic and military intervention, and more recently the drug war, continue to cause violence, instability, and underdevelopment to our south. Furthermore, our history of border militarization has split families apart, causing the migration of those who want to reunify with loved ones. Thus, it is not surprising that movements of unaccompanied minors stem from the need to flee violence, a longing to reconnect with family members, and a desire for better opportunities. In fact, it is our responsibility to protect this population fleeing to our border precisely because the United States is implicated in the reasons for which they leave in the first place. However, once minor immigrants make it to the U.S., how do they interact with our laws and procedures? Do these laws provide adequate protection? These are important questions, because the failure to protect this population has severe ramifications.²⁵ Minor immigrants need

²⁴ Ibid. Pg. 23

²⁵ See Generally: "In Honduras, U.S. Deportees Seek to Journey North Again." LA Times. 16 August 2014.

protections beyond those given to adults. Therefore, there must be deliberate mechanisms in place that ensure this group is procedurally *and* substantively protected as they encounter our immigration system.

Overview of Legal Processes for Unaccompanied Minors

After traveling through Mexico to reach our southern border, minor immigrants from Central America have already had to overcome a series of hurdles. Indeed, journalists have reported that along the route from home to the border many unaccompanied minors are raped by gang members, die of exposure or starvation, are forced into slavery, or lose their limbs while riding the immigrant train, nicknamed “La Bestia,” through Mexico.²⁶ Even after enduring these trials, however, once in the U.S. these minors face a complex labyrinth of policies and procedures even before they begin an uphill battle in immigration court. Here I briefly describe the initial processes that occur before proceedings in court.

The Homeland Security Act of 2002 (HSA) defines an “unaccompanied alien child” as someone who is not a lawful citizen, is under the age of 18, and for whom “there is no parent or legal guardian in the U.S...to provide care and physical custody.”²⁷ Though many minor immigrants do have a parent in the U.S., they are classified as unaccompanied if they enter the United States without a parent or legal guardian. Before the HSA, minors were held in the custody of the Immigration and Naturalization Service (INS). This department was not only the keeper of unaccompanied minors while under U.S. custody, but also the

²⁶ See Generally: Aridjis, Homero. “Migrants Ride a ‘Train of Death’ to get to America & We’re Ignoring the Root of the Problem.” Huffington Post. 07 September 2014.

²⁷ Homeland Security Act, 2002.

prosecuting entity that presented charges upon the minor. Activists criticized this “dual capacity as caretaker and prosecutor” until a post-9/11 overhaul of the agency.²⁸

The introduction of the Department of Homeland Security (DHS) in 2003 resolved this conflict of interest. Changes “eliminated the INS and transferred all immigration and enforcement functions to three divisions...Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).”²⁹ Further, the HSA stipulated the transfer of children’s affairs “to the Director of the Office of Refugee Resettlement (ORR)” which “shall be responsible for... coordinating and implementing the care and placement of unaccompanied alien children,” while the USCIS would be responsible for legal proceedings.³⁰

Today, unaccompanied minors are placed into removal proceedings after apprehension by federal authorities usually either at the border through CBP or in the interior of the nation by ICE. After apprehension, all immigrant minors suspected of violating immigration law are transferred to DHS for processing and held in a temporary DHS facility for a maximum of 48 hours.³¹ During this time, DHS confirms the ages of immigrants in order to properly classify them as minors. To this end, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) stipulates that age determination procedures should “at a minimum...take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien.”³²

²⁸ “The Flow of Unaccompanied Children through the Immigration System.” Vera. 2012. Pg. 6.

²⁹ Ibid. Pg. 6.

³⁰ Homeland Security Act, 2002. 2202-2203.

³¹ “The Flow of Unaccompanied Children through the Immigration System.” Vera. 2012. Pg. 10.

³² Trafficking Victims Protection Reauthorization Act, 2008. Pg. 5077.

Once a migrant is determined to be under the age of 18 and is unaccompanied by a parent or legal guardian, they are designated as an “unaccompanied alien child” by DHS, and, as per the Trafficking Victims Protection Reauthorization Act, this information must be communicated to the Department of Health and Human Services (HHS) and the Office of Refugee Resettlement within 48 hours. However, not all unaccompanied alien children get moved to the custody of HHS and ORR for placement in a less restrictive setting. Instead, there are special rules for minors from “contiguous countries.” The TVPRA articulates under “special rules for children from contiguous countries” that any minor immigrant from a country connected by land to the United States (i.e. Mexico and Canada) is permitted to “withdraw the...application for admission,” and an officer may “return such child to the child’s country of nationality...”³³ According to the Vera Institute, this has led to the quick deportation of the majority of unaccompanied minors from Mexico, even though the law states that they must be screened to ensure they have not been trafficked nor have a fear of persecution in the home country. Therefore, many child immigrants from Mexico who have valid reasons for staying in the U.S. are never heard before our immigration courts.³⁴

For minor immigrants from Central America, however, there is automatic placement within an ORR shelter facility while DHS begins removal proceedings. While in ORR custody, the government begins to search for a family sponsor who can look after the minor while he or she is going through immigration proceedings. A sponsor can include a

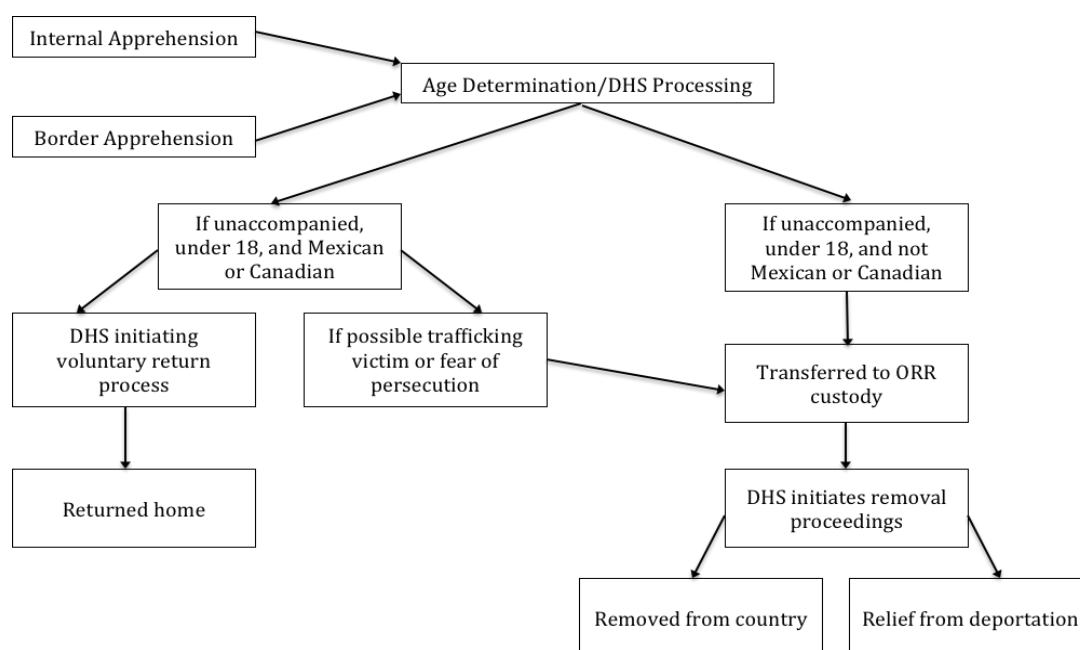
³³ Ibid. Pg. 5075.

³⁴ “The Flow of Unaccompanied Children through the Immigration System.” Vera. 2012. Pg. 11.

parent, legal guardian, adult relative, another adult individual designated by the parent, a licensed program that will accept custody, or other adult approved by the ORR.³⁵

While in ORR custody or after reunification with a family member, the minor immigrant awaits an appearance in immigration court. Before his or her first day in court, the child may have already received a preliminary legal screening or a “know your rights” presentation by a non-profit entity. Generally, however, many unaccompanied minors do not have legal representation for the first court appearance and are only told to begin searching for free or low cost counsel at this initial hearing.

Figure 1: Process for Unaccompanied Minors after Apprehension, By Author



A Legal Conception Centered on Procedural Protection for Unaccompanied Minors

Throughout my research, I sought to understand the differences in how minor immigrants are protected as they go through deportation proceedings and how much

³⁵ Ibid. Pg. 18.

“protection” they actually receive in the way their cases are adjudicated in court. Indeed, although I outline many procedural protections for minor immigrants in legislation and USCIS (Citizenship and Immigration Services) policy, I question whether these protections are actually effective in creating positive outcomes for minor immigrants seeking relief from deportation. Thus, I began to study what I termed the “legal conception” of unaccompanied minors in our immigration system—namely understanding how our laws create a notion of protection for immigrant youth through procedural safeguards. By “procedural” I mean protections that do not directly affect outcome but assist with the *process* of going through removal proceedings. For example, being placed in the “least restrictive” detention setting is a procedural safeguard for immigrants. I will contrast this conception with a description and analysis of the narrow pathway that is available for unaccompanied minors to receive relief from deportation—what I term “substantive” outcome—and the limited availability of legal representation to argue on their behalf in court. By examining legislation, international agreements, relief statutes, USCIS procedure, and court observations, I aim to portray the contradictions that are present between the “legal conception” centered on *procedural* protection for minor immigrants and their lack of protection in *substantive outcome* as it pertains to the statutes that dictate who receives relief from deportation. This contradiction is evident through both overly burdensome requirements for relief and inconsistency in representation for minors.

The Origins of a Legal Conception for Unaccompanied Minors

Throughout U.S. legal discourse, there is a pervasive idea that children should be treated differently than adults. For example, through the notion of *parens patriae*—the legal doctrine of the State as parent of the nation—U.S. courts have cited the government’s

interest in “preserving and promoting [a] child’s welfare” when there is no one to provide guardianship.³⁶ In addition, the U.S. prides itself on being a supporter of international provisions like “The Convention on the Rights of the Child” (CRC), which stipulates that “[a] child.....needs special safeguards and care, including appropriate legal protection,” that a State should “take all appropriate measures to ensure that [a] child is protected against...punishment on the basis of [their] status, activities, [or] expressed opinions,” and that “States shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention” no matter the child’s citizenship status.³⁷ In fact, the convention articulates that these are “equal and inalienable rights of all members of the human family” and thus should be extended to all groups of minors, including refugees.³⁸ Finally, our government supports protections for children fleeing armed violence, which may be interpreted to include minors from Mexico and the Northern Triangle. As a party to the “Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict” (2000), the U.S. has condemned “with the gravest concern the recruitment, training and use...of children in hostilities by armed groups distinct from the armed forces of a State,” and under the CRC, we are required to protect these minors.³⁹

Some of these international standards have aided in addressing the needs of immigrants to the United States, as the U.S. used these ideas to created separate regulations for how minor immigrants should be treated. Although “prior to 2003, immigration officials

³⁶ Santosky v. Kramer 455 U.S. 745 (1982)

³⁷ “Convention on the Rights of the Child.” United Nations. 20 November 1989.

³⁸ Ibid.

³⁹ “Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.” United Nations. 25 May 2000.

made little distinction between minors and adults when apprehending and detaining those who entered the country without authorization,” beginning with the HSA in 2002, the U.S. codified protections for minors.⁴⁰ To begin, the Act created and defined the term “unaccompanied alien child.” This is important because it implies that this group of immigrants is different from others.⁴¹ Indeed, the modifiers “child” and “unaccompanied” build on the fact that these immigrants are “aliens” under the law. Therefore, any added protections or differential treatment by the state for this group should be seen as tied to their designation as unaccompanied children on top of this foundational “alien” status.

The HSA defines unaccompanied alien children by not only making them distinct from other immigrant groups because of their age and dependent status, but also through the added protections that it gives to these immigrants. For example, after transferring the responsibility of the “care of unaccompanied alien children” from the INS to the Office of Refugee Resettlement (ORR), the HSA dictates that the ORR be responsible for “ensuring that the interests of the child are considered in decisions and actions relating to [their] care,” “implementing policies with respect to the care and placement of [unaccompanied minors],” and ensuring that minors “are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitative activity.” All of these phrases support the idea that the State aims to protect minor immigrants because of their status as minors.⁴²

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 also adds procedural protections for unaccompanied minors. Section 235, “Enhancing Efforts to

⁴⁰ Rempell, Scott. “Credible Fears, Unaccompanied Minors, and the Causes of the Southwestern Border Surge.” *Chapman Law Review*. 2015.

⁴¹ Homeland Security Act, 2002. Pg. 2205.

⁴² *Ibid.* Pgs. 2203-2204

Combat the Trafficking of Children,” of the Act describes how it will help “to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or last habitual residence” in order to prevent trafficking in children at the border and ports of entry.⁴³ To this end, the Act describes agreements with countries that will ensure safe repatriation and discusses the creation of a “Repatriation Pilot Program” to track the success of this repatriation. Further, the Act dictates that “an unaccompanied alien child in the custody of the Secretary of Health and Human Services shall be promptly placed in the least restrictive setting that is in the best interest of the child” and that, “to the greatest extent practicable,” minor immigrants should have legal representation.⁴⁴ Indeed, the HHS claims that it “shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.”⁴⁵ Finally, the Act recognizes that immigrant minors have needs that adults do not by explaining that there must be “regulations which take into account the specialized needs of unaccompanied alien children and which address both procedural and substantive aspects of handling unaccompanied alien children’s cases.”⁴⁶ Again, these clauses are evidence of the procedural protections that the State has created for unaccompanied minor immigrants.

However, these immigrants are still “aliens” in removal proceedings and ultimately are still in jeopardy of deportation. Thus, unaccompanied minors are in a situation where the same laws that outline protections for this group in line with international and domestic standards for the legal treatment of children simultaneously enforce immigration legislation against these “illegal aliens.” For example, the HSA shows these two competing

⁴³ Trafficking Victims Protection Reauthorization Act, 2008. Pgs. 5074-5075.

⁴⁴ Ibid. Pgs. 5078-5079.

⁴⁵ Ibid. Pgs. 5078-5079.

⁴⁶ Ibid. Pg. 5081.

forces when it mandates that the ORR ensure that placement with relatives does not compromise the likelihood of the minor immigrant to “appear for all hearings or proceedings in which they are involved.” This means that, even if a certain placement may be in the minor’s best interest, if it compromises their ability to appear in court, enforcement concerns take priority. Further, nothing in the Act “may be construed to transfer the responsibility of adjudicating benefit determinations...from the authority of any official from the DOJ, DHS, or Department of State,” meaning that these offices reserve the right to make decisions about the status of the minors despite any expertise other departments may have in understanding their needs.⁴⁷ These more stringent policies show that not all legislation pertaining to immigrant minors adds protections. Instead, at times they also enhance the ability of the government to enforce immigration law on this group.

Similarly, portions of the TVPRA also codify processes meant to facilitate the removal of the same minors that it is designed to protect. Despite the repetition of phrases such as “vulnerable unaccompanied alien children,” “trafficking victims,” and “protection from trafficking” that display the government’s position as a protector of this population, this same legislation establishes clauses such as “Special Rules for Children from Contiguous Countries” that hurt, rather than help, asylum seekers.⁴⁸

As explained before, this section of the law dictates that unaccompanied minors from Mexico or Canada should go through expedited deportation unless they can convince an official that they should be transferred to the ORR as a trafficking victim or credible asylum seeker. At face value, this separate process for minors from a “contiguous country” seems intuitive due to proximity and the stipulation that *all* UAMs be given the chance to

⁴⁷ Ibid. Pg. 2204.

⁴⁸ Ibid. Pg. 5075.

plead their case to an immigration officer before removal. However, in practice, this provision is far from fair.

First, there are only two contiguous countries to the U.S. However, as less than one-tenth of one percent of minor immigrants come from Canada, this particular section de-facto targets Mexican children under the guise of “children from contiguous countries.”⁴⁹ Further, agents who determine whether or not the “children from contiguous countries” have a credible fear of relief may not be doing so properly. Although nearly 60% of unaccompanied Mexican minors cite violence as a major factor of leaving home, only 4.5% of over 17,000 Mexican children apprehended in 2013 were transferred to ORR custody.⁵⁰ This means that only 765 Mexican children were given the opportunity to plead their case out of 17,000 that were initially apprehended by immigration agents. These numbers clearly show that there is an injustice happening at our border, as minor immigrants from Mexico are being deported without due process.⁵¹

In summary, U.S. policies exhibit instances of increased protection while still enforcing immigration statutes against unaccompanied minors as aliens in the United States. To this end, the implementation of the HSA and TVPRA craft a conception around immigrant youth that differentiates this group from others due to their vulnerabilities as minors. These statutes outline very specific procedural safeguards that serve to protect minor immigrants as they begin removal proceedings. At the same time, however, the government’s duty to enforce the law is evident in the ways that these statutes actually

⁴⁹ Only 114 of 145,366 of minor immigrants since 2005 have come from Canada according to EOIR data available at: <http://trac.syr.edu/phptools/immigration/juvenile/>

⁵⁰ Pizzey, Natasha. “Forgotten on La Frontera.” WOLA. 22 January 2015.

⁵¹ See Generally: “Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied Mexican Minors.” Appleseed. 2011.

make it easier for officials to deport these immigrants. Overall, the HSA and TVPRA are evidence that the government thinks about unaccompanied minors differently. This treatment of unaccompanied minors shows that there is a conception surrounding this group that is rooted in the need of the State to provide extra protections. This conception is worthy of scrutiny, however, especially as we move into the realm of the ramifications the protections have on the substantive outcomes for minor immigrants in court.

Legal Conception of Procedural Protection Furthered through USCIS Policies

In addition to legislation discussed above, special regulations put into place by USCIS further the idea that minor immigrants, by virtue of being minors, should be protected. In promoting policies that serve to protect unaccompanied minors, the USCIS has released various procedural guidelines and memoranda to court officials and officers to safeguard minors who are in removal proceedings. These protections include child-specific policies given to judges who preside over immigration court, guidelines and trainings for asylum officers adjudicating cases for minors, and even child-friendly standards of interpretation handed down through court precedent for asylum-seeking children. In analyzing these protections, however, we should think about the ultimate reason for their implementation—to give unaccompanied minors a fair chance at receiving relief from deportation—and whether or not these protections actually meet this goal.

On May 22, 2007, Chief Immigration Judge David Neal sent a memorandum to all immigration judges and court staff entitled “Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children.”⁵² In the memorandum, he details how “when [a] respondent is a child, the immigration judge faces fundamental challenges in adjudicating

⁵² Available at: <http://www.justice.gov/eoir/efoia/ocij/oppm07/07-01.pdf>

the case.” He then outlines protective measures such as permitting children to “explore the courtroom,” “conduct[ing] cases on involved unaccompanied alien children on a separate docket,” “employ[ing] child sensitive questioning,” and “mak[ing] proper credibility assessments” concerning evidence and testimony.⁵³ Overall, these procedures are meant to make the courtroom experience friendlier for minors and serve to ensure “that the respondent understand[s] the nature of the proceeding, effectively presents evidence about the case, and has appropriate assistance.” Some of these procedures, such as allowing the child to walk around the courtroom, make the process more comfortable. While policies that affect how the child is questioned can actually change how the judge perceives their case. Both of these protections, however, show that officials are thinking about practices that will better fit the needs of children as they go through the court process.⁵⁴

Outside of the courtroom, USCIS also implements similar child-sensitive policies. In their “Guidelines for Children’s Asylum Claims” for asylum officers, the USCIS reiterates “the unique vulnerability and circumstances of children” and outlines various differences in asylum adjudication for minor immigrants. These include arranging for unaccompanied minors to “receive an affirmative interview with an asylum officer” instead of an adversarial trial in court with a judge, have the “presence of [a] trusted adult at the interview,” and be examined with “child sensitive questioning and listening techniques.”⁵⁵ Furthermore, the guidelines dictate leniency in reference to standards of credibility and evidence in asylum claims. The handbook states that asylum officers should be aware of issues such as “the limited knowledge that children may have of the circumstances” and the

⁵³ “Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children.” David L. Neal. 22 May 2007.

⁵⁴ Ibid.

⁵⁵ “Guidelines for Children’s Asylum Claims.” USCIS. 1 September 2009.

difficulty children may have in retelling events they have experienced in the past.⁵⁶ Because of these reasons, organizations have “advise[d] that children’s testimony should be given a liberal ‘benefit of the doubt’ with respect to evaluating a child’s alleged fear of persecution.” This standard was affirmed in the court opinion of *Matter of S-M-J*.⁵⁷

Lastly, there are procedural differences that serve to protect children as they apply for asylum. For example, the one-year filing deadline imposed on adults does not apply to unaccompanied minors, and although other immigrants may be “barred from applying for asylum based on a safe third country agreement,” this clause is also waived for minors.⁵⁸ Overall, the fact that there is a training course to guide asylum officers through children’s asylum claims shows how seriously U.S. Citizenship and Immigration Services considers the protections they outline for minor immigrants. Indeed, the procedures detailed in this handbook reinforce the legal conception that unaccompanied minors deserve certain protections in removal proceedings because of their status as minors.

Not only are these protections written in international agreements, legislation, and USCIS documents, but they are also faithfully observed in the field. As part of my research, I observed 56 “Master Calendar” hearings for unaccompanied minors—50 at New York Immigration Court and 6 at Harlingen Immigration Court in Texas. These observations were particularly informative in understanding how exactly the protective measures outlined above are put into practice. “Master Calendar” hearings are usually “a respondent’s first appearance before an immigration judge,” at which the respondent is given information on how to get an attorney, asked to verify their current address of

⁵⁶ Ibid. Pg. 32-33

⁵⁷ Ibid. Pg. 34.

⁵⁸ Ibid. Pg. 46-47.

residence, and, in the case of minors, asked to provide proof that they are currently enrolled in school.⁵⁹ In my experience observing these proceedings, I witnessed many of the protective measures described before, including the use of child-sensitive questioning, the ability of a child respondent to be accompanied by a trusted adult, and coordination with probono organizations to provide legal services to some minor immigrants.

The majority of my observations occurred in “Courtroom 12” on the 14th floor of the Immigration Court at 26 Federal Plaza, presided by Judge Virna Wright. As I sat in court at 9AM on Wednesdays and Thursdays, numerous minors and their relatives entered and exited, as proceedings usually lasted about five minutes. Each hearing began with a scripted introduction: “This is Judge Virna Wright in New York Immigration Court presiding over the removal proceedings for alien #XXX, principal respondent ____, assisted by our Spanish interpreter____.” Then, switching gears from a mechanical, almost automated voice, Judge Wright changed her tone and would look at the minor respondent with compassion and a smile. She would sit up as the child entered the court, usually wave when the child would walk to his or her seat, and even would ask how he or she was doing through the interpreter. She would then ask, “What is your name? How old are you?” After hearing this happen upwards of 50 times, it was obvious that this judge wanted to ensure that the respondent was as comfortable as possible in this unfamiliar setting.

Of the 56 Master Calendar hearings that I witnessed, 38 were unaccompanied minors present with an immediate family member (brother/sister or father/mother), eight were with minors who were not present but represented by a family member or attorney acting on their behalf, three were unaccompanied minors with a family friend or distant

⁵⁹ “Immigration Court Practice Manual.” U.S. DOJ. 1 April 2008. Pg. 64

relative, and six were minor immigrants without any accompaniment (all six in Harlingen).⁶⁰ Thus, in New York there was always a family member or attorney present with the minor in the courtroom. Furthermore, guests were allowed to come to the podium with their respondent, and the adult or attorney was allowed to answer questions for the minor immigrant if he or she felt uncomfortable.

Overall, my observations of Judge Wright illustrated that at least some immigration officials were putting the protections for unaccompanied minors outlined in USCIS procedure into practice. To this end, her handling of the case of 10 year old “Joe” exemplifies the child-sensitive policies that Judge Wright employed daily. Joe, from El Salvador, appeared in front of Judge Wright with his sister and the attorney that he obtained through a non-profit organization. After ensuring that both Joe and his sister were comfortable speaking in Spanish through the interpreter, Judge Wright began by asking the attorney if he “conceded removability and proper service” on behalf of his client; in other words, that the client is indeed an unauthorized alien in the United States and thus eligible for deportation. The lawyer did concede removability and indicated that he planned to apply for asylum and Special Immigrant Juvenile Status for Joe.

Judge Wright then proceeded to talk to Joe about his attendance in school. In his response, he excitedly answered in broken English and handed the court a copy of his certificate as “Warrior of the Week” for his class. Judge Wright asked him what that meant, and he replied through the interpreter that “it meant I was brave and did well.” Then Judge

⁶⁰ All six hearings that I observed in Harlingen, Texas were before the unaccompanied minor was relocated with a family member. While in court, a “friend of the court” stood by the minor, however this court representative had no prior relationship with the minor.

Wright spoke with him about continuing to do well in school and adjourned until April 30, 2015 to provide time for his attorney to begin crafting a case for his claims.⁶¹

Throughout this procedural appearance, Judge Wright did her best to ensure that Joe felt comfortable while in front of the court. She ensured that his sister was able to help him respond to questions; she spoke to the attorney only for legal matters; and most importantly she showed interest in his schooling and shared in his excitement for doing well in a different country where he is learning a new language. These small acts that show basic concern for the minors, fortunately, happened quite often during my time observing Judge Wright's court.

While I never saw Judge Wright treat a child poorly, there were times of frustration in Courtroom 12 when it came to legal counsel. For example, in the case of the son of "Leslie Mendoza," Judge Wright was visibly upset with the attorney representing Leslie and her son. As this was their second time in court, Judge Wright reminded the attorney that there was no need for either the mother or her son to be present in the courtroom. The attorney responded by explaining that he thought the mother needed to be present and was sorry that he had the wrong information. Judge Wright proceeded to explain to the courtroom that every time a child is present in court with a family member, not only is the child missing school, but the family member is also missing work. She lectured the lawyers in the room about how it was unacceptable for legal counsel to not make their best effort to ensure that their clients did not have to come to court for every proceeding.⁶² Thus, Judge

⁶¹ This observation occurred on January 29th 2015 in NY Immigration Courtroom #12.

⁶² This interaction also occurred on January 29th in NY immigration Courtroom #12. Judge Wright also had an altercation with an attorney who would not concede proper service, as the failure to concede service mandates the appearance of the respondent in the next

Wright made it a point to not only make minors in front of her court feel comfortable, but also hold legal counsel to a high standard. This showed that the Judge is concerned with the success of the children that come in front of her, even if their legal status is in limbo.⁶³

On January 29, 2015, I heard Judge Wright speak at a panel where she further described the procedures she implemented for minor immigrants in her courtroom. She stated that she often used colloquial language so as to not “scare the child,” that she did not wear a robe so as to seem less intimidating, and that she allowed snacks and toys in the courtroom to make the child more comfortable.⁶⁴ All of these tactics were used to create a “child-sensitive” courtroom experience and help the minor respondent have a fair shot at being successful in claiming relief from deportation.

In summary, international agreements surrounding the treatment of children, domestic legislation that furnishes procedural protections for this group, and USCIS memoranda that provide special treatment for minor immigrants in removal proceedings, work together to create a legal conception that is centered on the protection of this vulnerable population as they encounter our immigration system. All of these protections, however, are constrained by the text of the immigration statutes that dictate the grounds for which someone can receive relief from deportation.

Indeed, in terms of immigration outcomes, the protections I have outlined only help to implement what is in relief statutes. No matter how child-friendly Judge Wright is, no matter how humanely we treat minors as they are processed at the border, and no matter

session. She told counsel to “think about what he was doing” as his actions were his legal right but also created the need for the child to “miss school again.”

⁶³ Because hearings beyond Master Calendar hearings are closed to the public, I was unable to see how more substantial immigration interpretations played out in court, but the procedures I described show how protections for UAMs do occur in courtrooms.

⁶⁴ Panel Discussion with Judge Wright. New York Law School. 10 February 2015.

what international agreements say about how we should treat children, at the end of the day the United States can only grant relief to aliens that fit the requirements set by the immigration laws that have been passed by Congress. These laws, and only these laws, directly determine the outcomes of removal proceedings for minor immigrants. Thus, after articulating this legal conception that promotes procedural protections for unaccompanied minors from legal texts to court behavior, we must examine how exactly unaccompanied minors can receive relief from deportation in order to see if these protections do anything beyond mere procedure. If, after all, these safeguards were put into place to help minors in removal proceedings receive fair judgments, then they are only beneficial up to the point that the relief statutes, and legal representation that argue the statutes, are in fact fair.

No More Protection? Contradictions between Procedural and Substantive Realities

The avenues for relief from removal for unaccompanied minors include asylum, Special Immigrant Juvenile Status, U-VISA status, and T-VISA status. In this section, I will articulate how one qualifies for each of these forms of relief and analyze whether they actually apply to the majority of minor immigrants fleeing Mexico and the Northern Triangle. While the U.S. has enumerated and implemented various protections for unaccompanied minors, what can these protections do if the current pathways to relief from deportation do not apply to most unaccompanied minors coming to the U.S. from these areas? The pathways that minors must navigate to receive relief from deportation contradict the procedural protections that this group has been granted, as narrow interpretations of statutes lead to little substantive protection for minor immigrants.

To begin, asylum law in the United States has very specific eligibility requirements. First, one must establish that they meet the definition of a “refugee.” This encompasses “any person who is outside any country of such person’s nationality...and who is unable or unwilling to return to...that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...”⁶⁵ Furthermore, it is crucial that one of the 5 grounds described above “was or will be at least one central reason for persecuting the applicant.”⁶⁶ For minor immigrants applying for asylum, they must meet this definition by presenting relevant testimony and evidence to asylum officers who will determine whether they will be granted asylum or pass the case on to a judge.

Special Immigrant Juvenile Status (SIJS), on the other hand, differs from asylum in that it is a form of relief that is predicated on a decision by a state court. SIJS “provides lawful permanent residency to children who...cannot be reunified with one or both parents due to abuse, neglect, [or] abandonment...”⁶⁷ According to the Immigration and Nationality Act, one can be classified as a special immigrant if he or she is under 21 years of age, unmarried, and 1) has been declared a dependent of a juvenile court, agency, or individual appointed by the State; 2) cannot be reunified with one or both parents due to abuse, neglect, or abandonment; and 3) it is in their best interest to stay in the United States.⁶⁸ After a state court makes these determinations, then the applicant must submit a certification to the USCIS and wait for final approval from the federal agency.

⁶⁵ 8 U.S. Code § 1101

⁶⁶ 8 U.S. Code § 1158

⁶⁷ “Immigration Options for Undocumented Immigrant Children.” Immigrant Legal Resource Center. July 2013.

⁶⁸ 8 U.S. Code § 1101

Other less utilized forms of relief for minors include benefits for noncitizens that are victims of serious crime and can help the investigation of said crime (U-VISA) and relief for noncitizens who are the victims of severe forms of trafficking (T-VISA).⁶⁹ These four statutes encompass the entirety of the ways that immigrant minors can qualify for relief from deportation, with asylum and SIJS being the most utilized of the four methods.

Each of these statutes contributes to the creation of an overly narrow pathway to deportation relief for minor immigrants. In order to show this narrow pathway, it is necessary to analyze the text of each law and the relevant legal precedent that dictate how decisions are made. The texts of these statutes, and the way they are interpreted, establish the criteria that decide who is eligible to stay in this country. Looking at each statute's requirements, one common factor is that each is predicated on the experience of violence or exploitation, and no avenue of relief exists for those immigrating for purposes outside of the experience of violence or persecution. Looking back at the reasons unaccompanied minors come to the United States, one can already see that many who come for reasons outside of the experience of violence will not be included. Further, those fleeing violence must be experiencing the particular types of violence recognized by immigration law, and for particular reasons, before they are eligible for relief.

For asylum claims, one must show persecution or fear of persecution to be granted asylum status. To this end, USCIS details that persecution "can consist of objectively serious harm or suffering that is inflicted because of a characteristic of the victim." Furthermore, circuit courts have defined the term to "include actions less severe than threats to life or

⁶⁹ "Immigration Options for Undocumented Immigrant Children." Immigrant Legal Resource Center. July 2013.

freedom; however, ‘actions must rise above the level of mere harassment’...”⁷⁰ After one establishes that they have experienced, or have a well-founded fear of experiencing, this type of harm, then he or she must prove that the persecutor inflicted that harm *on account of* his or her race, religion, nationality, membership in a particular social group, or political opinion. For asylum, therefore, one must first prove the experience of a severe form of violence *and then* prove that the violence occurred for one of the enumerated reasons.

SIJS relief is also predicated on some level of violence inflicted on a minor. Indeed, in order to be eligible for SIJS, a minor has to show proof of harm, abuse or neglect by one or both parents *and* show that it is in their best interest not to go back to their country of origin. Although SIJS does not define abuse, neglect, or abandonment in the statute, those determinations are left to each individual juvenile court, as they should have expertise in those matters.⁷¹ This means that, though specific definitions may vary depending on the jurisdiction of the court, the child will have to show that one or both parents has harmed him or her in some way. Thus, just as in asylum law, SIJS requires the experience of violence, though it does not require one to tie this violence to a specific reason.

Finally, U-VISA, and T-VISA are also predicated on violence. According to a USCIS presentation entitled “Immigration Relief for Vulnerable Populations,” T-Nonimmigrant Status (T-VISA) “provides immigration protection to victims of human trafficking” because “Congress want[s] to aid law enforcement in investigating and prosecuting human trafficking by providing a way for alien victims to remain in the U.S. to assist in an

⁷⁰ “Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution.” USCIS Asylum Officer Basic Training. 6 March 2009.

⁷¹ “Challenges in the Adjudication of Petitions for Special Immigrant Juvenile Status.” National Immigrant Justice Center. 18 July 2013.

investigation or prosecution.”⁷² To this end, the victim must first show that they suffered “a severe form” of trafficking, then “comply with reasonable requests for assistance in the investigation or prosecution,” and finally prove they will “suffer extreme hardship involving unusual and severe harm upon removal from the United States.”⁷³ Severe trafficking, according to federal definitions, only includes sex and labor trafficking.

Similarly, U-Nonimmigrant Status (U-VISA), “provides protection to victims of certain types of crimes” that occurred within the United States in order for police to use these victims for help in the investigation. In order to be eligible, one must “be a victim of a qualifying criminal activity and suffered substantial physical or mental abuse as a result of the crime,” “possess information about the qualifying criminal activity,” and be “likely to be helpful in the investigation and/or prosecution of that qualifying criminal activity.”⁷⁴ The “qualifying criminal activities” protected by the statute include many of the most violent crimes such as rape, torture, domestic violence, female mutilation, slave trade, and abduction.

These four statutes constitute the totality of the grounds for how unaccompanied minors can stay in the U.S. under current immigration legislation. One must have faced persecution based on membership in a protected class, suffered abuse or neglect from a parent, or have been a victim of trafficking or other qualifying crime *and* be able to help the State in the investigation of said crime in order to receive relief from deportation. All of these provisions not only produce a narrow path to relief predicated on the experience of violence, but also leave out other common reasons for immigration for minors, most

⁷² “Immigration Relief for Vulnerable Populations.” Presentation. USCIS. July 2011.

⁷³ Ibid.

⁷⁴ Ibid.

notably, family reunification. In addition, only specific types of violence are deemed important enough to grant relief from deportation.

For example, while U-VISA and T-VISA are meant to “protect” victims of severe trafficking and/or crime, first the victim must be ready and willing to support the investigation of said crime. If not, then the violence that he or she encountered is irrelevant in the eyes of the law. In addition, for asylum, the persecution you suffer only matters if it happens *because of* race, religion, nationality membership in a particular social group, or political opinion. Finally, for SIJS, not only does one have to show abuse, abandonment, or neglect by a parent to a state court, but one must also prove that the state court “had a reasonable factual basis for all the claims that they made” by providing evidence to USCIS before the SIJS petition is given final approval.⁷⁵ Indeed, Meghan Johnson, a director of legal services for minor immigrants in the Rio Grande Valley, described SIJS as being far from “an automatic determination.” In fact, her clients often get requests for evidence on top of what was presented in court. The requirement of extra evidence shows that USCIS reserves the right to supersede the decision of state courts. This is contradictory to the very reason SIJS was created in the first place—to give juvenile courts jurisdiction in a matter that they hold expertise in.

In summary, the available methods of relief for unaccompanied minors create a narrow path for relief from deportation. The experience of violence paired with the extra burdens described above make it very difficult to prove why one deserves to stay in the United States. Furthermore, there are no available avenues to relief for those who emigrate to the U.S. for reasons other than being the victim of a crime or covered type of persecution.

⁷⁵ Interview with Meghan Johnson. ProBar Legal, Rio Grande Valley. 30 December 2014.

Indeed, if an unaccompanied minor emigrates to reunify with family members in the U.S., they are not protected at all. Finally, because of the circumstances in which unaccompanied minors come to the United States from Mexico and Central America, many may actually be ineligible for the protections outlined in asylum, SIJS, U-VISA, and T-VISA statutes, even when they do experience violence or persecution.

Profile of Unaccompanied Minors from Mexico and Central America

Recall how the United Nations High Commissioner for Refugees released a report detailing the various reasons unaccompanied minors leave their home countries for the United States.⁷⁶ While the reasons minors come to the United States are “complex and multifaceted and in many cases include both protection-related and non-protection-related concerns,” I aim to discuss these reasons in order to better understand how many minor immigrants have claims to asylum and SIJS status in the U.S. I focus on asylum and SIJS because they are the most commonly utilized forms of relief by unaccompanied minors.

In “Children on the Run,” the UNHCR took a survey of 404 unaccompanied minors from Mexico and Central America and interviewed them in order to understand why they were leaving home. They coded answers to correspond to 5 broad categories—“Violence in Society,” “Abuse in Home,” “Deprivation,” “Family or Opportunity,” and “Other.” The survey allowed respondents to state multiple reasons why they may have left. Overall, the UNHCR’s data found that “no less than 58% of the 404 children interviewed...were forcibly displaced because they suffered or faced harms that indicated a potential or actual need for

⁷⁶ In this section, I call upon data collected by the UNHCR Washington Office. In their report “Children on the Run,” they include a survey of 404 unaccompanied minors from Mexico and Central America to better understand reasons for leaving the home country. I hope to use this data to make an argument about the applicability of current immigration statutes to minor immigrants coming from these areas.

international protection.”⁷⁷ In getting this percentage, the UNHCR coded “Abuse in Home” and “Violence in Society” to be the only categories protected by the international refugee definition, which is what the United States uses to adjudicate asylum claims, and did not double-count those who cited both of these categories as reasons for leaving. Thus, 42% of respondents cited “Deprivation,” “Family or Opportunity,” “Other,” or a combination of the three, and would be deemed ineligible for asylum or SIJS status (See Appendix Exhibit 1).

In summary, their data show that 1) the majority of unaccompanied minors (58%) experience violence and attribute it as a reason why they have left their home; 2) the major types of violence occur at the hands of gangs or drug cartels or in the home by family members; and 3) a substantial number (42%) of minors also come to the United States for reasons that don’t include violence at all. In an interview with a government official working in the Honduran embassy, I was able to confirm these results. When asked why minors were fleeing to the U.S. from Honduras he answered, “[o]n the one hand, lack of economic opportunity and on the other hand people don’t feel protected by their institutions. The third is just the general security situation...[which has allowed] drug traffickers or gangs to really proliferate...those are the push factors.”⁷⁸ This statement reinforces what the UNHCR isolates as the major reasons why unaccompanied minors flee.

The reasons why minor immigrants are leaving their countries of origin are important because they show that very few may, in fact, be eligible for relief from deportation. Exhibit 1 (Appendix), details the totality of the responses collected by the UNHCR. In the following sections, I will use testimony from respondents from the “Children on the Run” survey to illustrate potential legal arguments for UAMs applying for asylum

⁷⁷ “Children on the Run.” UNHCR. July 2014. Pg. 6.

⁷⁸ Interview with Official from Honduran Embassy. 9 January 2015.

based on the experience of gang violence, SIJS based on abuse in the home while reunified with one parent, and finally the lack of potential arguments for relief for minors who desire family reunification. These situations mirror the three major reasons unaccompanied minors come to the United States, and my analysis of them will show that it is highly unlikely that many minor immigrants from Mexico and Central America will qualify for deportation relief in the way that the law is written and interpreted today, despite the procedural protections that are available to this group.⁷⁹

Asylum: Gang Violence

"The problem was that where I studied there were lots of M-18 gang members, and where I lived was under control of the other gang, the MS-13. The M-18 gang thought I belonged to the MS-13. They had killed the two police officers who protected our school. They waited for me outside the school. It was Friday, the week before Easter, and I was headed home. The gang told me that if I returned to school, I wouldn't make it home alive. The gang had killed two kids I went to school with, and I thought I might be the next one. After that, I couldn't even leave my neighborhood. They prohibited me. I know someone whom the gangs threatened this way. He didn't take their threats seriously. They killed him in the park. He was wearing his school uniform. If hadn't had these problems, I wouldn't have come here."

-Alfonso, El Salvador, Age 7

An unaccompanied minor fleeing gang violence like Alfonso would likely file an asylum claim. According to its requirements, "an alien must satisfy each of the following

⁷⁹ Although it will be hard to make claims on hypothetical legal situations, in this section I want to highlight the inadequacies in the ways minor immigrants can apply for relief from deportation by using the experiences of respondents to the UNHCR survey. In doing so I understand that I am projecting legal arguments on specific situations that may or may not happen, but this exercise is meant to show how difficult it would be for a minor to receive relief in the current system.

four elements in the definition of a refugee...(1) the alien must have a ‘fear’ of ‘persecution’; (2) the fear must be ‘well founded’; (3) the persecution feared must be ‘on account of race, religion, nationality, membership in a particular social group, or political opinion; and (4) the alien must be unable or unwilling to return to his country of nationality...”⁸⁰

In most asylum claims based on persecution by gangs, respondents will argue persecution on account of their membership in a “particular social group.” Beginning with the opinion in *Matter of Acosta*, U.S. courts began to define the ambiguous phrase “particular social group,” so that lower courts could have a uniform test to determine what qualifies as such a group. To this end, *Matter of Acosta* articulates the “immutable characteristic test,” which asks whether or not members of a proposed group share a common characteristic “that the members...either cannot change, or should not be required to change” in order to be considered part of a “particular social group.”⁸¹ However, beginning in 2006, “the Board of Immigration Appeals [began to] formally inject the elements of ‘social visibility’ and ‘particularity’ into social group analysis.”⁸² These new requirements now affect arguments brought forth by refugees fleeing gang violence in Central America and Mexico, including minor immigrants.

The 2008 case *Matter of S-E-G-* clarifies the importance of the new “particularity” and “social visibility” requirements. In this case, two 16-year-old male respondents filed for asylum after “armed MS-13 gang members warned [them] that [they] must join the gang or else their bodies might end up in a dumpster or in the street someday.”⁸³ They argued that “their persecutors were motivated to harm them because of their membership in the

⁸⁰ *Matter of Acosta*. Decided by the BIA. 1 March 1985. Pg. 221.

⁸¹ Casper, Germain, & Greenstein. “The Convolution of Particular Social Group Law.” 2011.

⁸² Ibid.

⁸³ *Matter of S-E-G-I, et al., Respondents*. Decided by the BIA. 30 July 2008. Pg. 580.

particular social group of Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang based on their own personal, moral, and religious opposition...”⁸⁴ In his opinion, the judge concluded that the respondents “failed to establish either past persecution or a well-founded fear of future persecution on account of a protected ground” because “the beating and threats against the respondents were based on the gang’s desire to recruit new members and fill their ranks, rather than to punish the respondents for their membership in a particular social group or their political opinion.”⁸⁵ This judge effectively accepted that the minors were facing harm, but ruled against them because he believed that the harm they faced did not occur because of membership in a group. Because he determined that the harm inflicted was not *on account of* membership in a group, the judge did not move further in discussing if he thought the respondents were members of a particular social group at all. The appeal made in this case, however, did comment directly on that matter.

During the appeal, the Board of Immigration Appeals (BIA) took up the question of whether or not “Salvadoran youths who have resisted gang recruitment” constituted a particular social group as understood in the refugee definition. Interestingly, building on the opinion in *Matter of Acosta*, this court added the requirements of “particularity” and “social visibility” to “give greater specificity to the definition of a social group.”⁸⁶ The “particularity” requirement mandates that a proposed group “be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a

⁸⁴ Ibid. Pg. 580.

⁸⁵ Ibid. Pg. 581

⁸⁶ Ibid. Pg. 582.

discrete class of persons.”⁸⁷ This means that one must show that the persecution being argued is limited to the discrete class of persons one is proposing to be the social group. Further, by “social visibility” the court felt that “the shared characteristic of the group should generally be recognizable by others in the community.”⁸⁸ Overall, in *Matter of S-E-G*, the lower court’s decision was affirmed because the appellate court believed that youth was not an immutable characteristic because “by its very nature [youth is] a temporary state that changes over time.”⁸⁹ Furthermore, the court argued that the particular social group of “Salvadoran youth subject to gang recruitment” failed the particularity test, as there was no evidence that signified that gangs limited their violence to that particular group.⁹⁰ Finally, the same social group failed the “social visibility” test as there was little evidence “to indicate that Salvadoran youth who are recruited by gangs but refuse to join would be a ‘perceived as a group’ by society, or that these individuals suffer from a higher incidence of crime than the rest of the population.”⁹¹ This line of reasoning accepted that the minor respondents faced harm, but rejected the asylum claim because the court felt that it was not the type of harm that fit the refugee definition.

Thus, although the respondents in *Matter of S-E-G* had a similar story to Alfonso, they were denied asylum not because the judge found them not to be suffering harm, but because the suffering did not meet the court’s definition of happening *on account of* being a member of a particular, visible, and distinct social group. Similar opinions have been rendered in particular social group claims in *Castellano-Chacon v. INS*, *Arteaga v. Mukasey*,

⁸⁷ Ibid. Pg. 584.

⁸⁸ Ibid. Pg. 586.

⁸⁹ Ibid. Pg. 583.

⁹⁰ Ibid. Pg. 585.

⁹¹ Ibid. Pg. 587

and most notably in *Valdiviezo-Galdamez v. Att’y Gen. of U.S* (also referred to as *Matter of M-E-V-G-*). These unfortunate decisions bring up serious questions about the applicability of asylum law to minor immigrants coming to the U.S. from Mexico and Central America, many of which articulate similar concerns due to gang violence. As the BIA has a history of denying cases for children fleeing gang violence based on membership in a particular social group, we must question whether the courts will continue to cast down these opinions on the surge of minors that are in the beginning stages of their asylum process. Asylum guidelines affirm that “regardless of the nature or degree of harm the child fears or has suffered, that harm must be tied to one of the protected grounds contained in the definition of a refugee.”⁹² Therefore, the situation begs the question: Will gang persecution be seen as a legitimate argument in front of asylum officers for immigrants minors coming from Mexico and Central America in the current wave?

This very question was raised in February 2010, when Mauricio Valdiviezo-Galdamez appealed the decision to deny his asylum claim on the basis of a narrow interpretation of “particular social group” in the U.S. Court of Appeals. Valdiviezo-Galdamez argued that the interpretation used to deny his claim, specifically the “particularity” and “social visibility” tests, were over-burdensome and inconsistent with the *Acosta* standard that had been applied before *Matter of S-E-G-*. Interestingly, the court agreed, and conceded that previous groups who were granted asylum were not subjected to this strict standard and still viewed as particular social groups by the BIA. For example, “former members of the El Salvador national police” was a social group previously recognized by the Board. However, there is nothing in the BIA opinion that shows that members of this group would

⁹² “Guidelines for Children’s Asylum Claims.” U.S. DOJ. 10 December 1998.

be socially visible or particular, as they now require.⁹³ In their conclusion, the court remanded Valdiviezo-Galdamez's case back to the BIA and articulated how the Board "has a choice of either remaining faithful to its precedents or adopting new requirements that would likely produce different outcomes for future applicants claiming to be members of the same 'particular social groups' as were recognized in earlier Board decisions."⁹⁴

Unfortunately, after being remanded this case, the Board of Immigration Appeals decided to "clarify that [their] interpretation of the phrase 'membership in a particular social group' requires an applicant for asylum or withholding of removal to establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question."⁹⁵ In essence, the BIA chose to stick with the stricter interpretation it described in *Matter of S-E-G-*, leaving the success for future asylum cases based on gang harassment highly unlikely.

In fact, unless a higher court strikes down these decisions, immigration officials will be bound by the definition articulated in this decision. This means that the vast majority of children currently fleeing gang violence from Mexico and Central America, while they have the "possibility of applying for relief," may not ever be able to receive that relief because of the interpretations we currently have in place. Alfonso may be one of the children who will not come out with a positive outcome because of our standards for whom we consider a refugee in the United States. The injustice in this situation is blatant. Even though our courts acknowledge that minor immigrants from Mexico and Central America are threatened or harmed at home, they are being turned away because of how U.S. refugee

⁹³ *Mauricio Caldiviezo-Galdamez v. Attorney General of the United States*. U.S. Court of Appeals for the Third Circuit. 3 February 2010.

⁹⁴ *Ibid.*

⁹⁵ *Matter of M-E-V-G-, Respondent*. Decided by the BIA. 7 February 2014.

laws are written and interpreted. Further, it becomes even more incomprehensible when one considers that the entity defining who can be protected from this harm with asylum designation is the same entity that caused the harm to happen in the first place. The United States serves as both judge of what constitutes an acceptable asylum claim, *and* the reason that the claim needs to be made, as this nation produced the instability and lack of infrastructure that allows the proliferation of gang violence in these countries in the first place.

SIJS: Violence in the Home

"My father would get mad at me and beat me all the time. Sometimes he would beat me with a belt every day. My mother couldn't really defend me because he would beat her, too."

- Angelo, Honduras, Age 17

Unfortunately, stories like Angelo's are common among unaccompanied children. Thankfully, under Special Immigrant Juvenile Status (SIJS), there is a route to immigration relief for children with a parent who has abused, abandoned, or neglected them.⁹⁶ To obtain relief, a child must first appear before a state juvenile court to get a "special findings order" certifying that the child meets the above qualifications. Then the child must apply directly to USCIS with this order as evidence of them meeting these standards, and finally their status can be adjusted after approval by the federal agency.

This type of immigration relief is interesting because, unlike other proceedings, it brings state courts into the federal immigration sphere. Indeed, SIJS has been praised by advocates, as juvenile courts may have more expertise than federal courts in matters concerning children's welfare. To this end, "juvenile courts play a crucial role in SIJS

⁹⁶ "SIJS: A Step-By-Step Guide for Safe Passage Volunteer Attorneys." Safe Passage Immigration Project. 23 November 2014. Pg. 15.

applications because they make the factual findings that allow children to apply” for federal relief.⁹⁷ However, this reliance on state courts brings about special problems. First, although the “one or both parents” clause is seen to “signif[y] that the child need not be separated from both parents to be eligible for SIJS,” some courts have issued opinions that look for an inability to reunify with *both* parents.⁹⁸ Further, “because abuse, neglect, and abandonment or a similar condition are not defined in the SIJS statute or regulations, state law governs their meaning for SIJS purposes,” meaning different definitions apply in different locations.⁹⁹ Thus, while this provision gives flexibility to a vulnerable population that has been the victim of violence from parents, questions remain about its consistency across jurisdictions. Will different interpretations of SIJS requirements create a situation where a child in one location can be granted a “special finding” while the same child, if in a different jurisdiction, would not? More importantly, will these differences result in deporting children back to abusive caretakers?

Several cases point to differing interpretations of the “one or both clause” in SIJS law leading to dangerous precedent for minor immigrants hoping to obtain relief from abusive caretakers. In *In re Erick M*, the respondent lived with his mother in Nebraska, but was committed to the state after various infractions with the law. While under state supervision, he motioned for special findings under SIJS, claiming that his father who “had not spoken to him in many years” had abandoned him¹⁰⁰ The juvenile court denied the claim, citing that, though it may be true that Erick’s father had abandoned him, “the facts

⁹⁷ Junck, Angie. “Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children.” Winter 2012. Pg. 52.

⁹⁸ Ibid. Pg. 56.

⁹⁹ Ibid. Pg. 57.

¹⁰⁰ *In re Erick M*. Supreme Court of Nebraska. 14 September 2012.

failed to show that reunification with Erick's mother was not viable because of abuse, neglect, abandonment."¹⁰¹ In their analysis of the decision, a Nebraska appellate court noted how this case "hinges on the meaning of the federal statute's requirement that a juvenile court determine that reunification with '1 or both of the immigrant's parents' is not feasible..."¹⁰² They affirmed the lower court's decision, articulating that the "USCIS does not consider proof of one absent parent to be the end of its inquiry under the reunification component. A petitioner must normally show that reunification with the other parent is also not feasible."¹⁰³ Thus, minors who come to the U.S. to reunite with one parent would have issues getting relief in Nebraska courts if they have suffered abuse, abandonment or neglect by the other parent. Further, this decision "represent[s] the law in the state," as it has not been overturned.¹⁰⁴

Similarly, a New Jersey court determined in *H.S.P. v. J.K.* that "it could not make the required SIJS finding without facts demonstrating that *both* parents were unavailable for reunification..."¹⁰⁵ In their analysis of the circumstances, the court believed that the respondent's mother was still active in his life, and although the father was determined to have had abandoned the respondent minor, reunification with the mother was still viable. Therefore, it did not make sense for the court to allow the child to stay in the United States with other family members if he could be sent back home to his mother.¹⁰⁶

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Johnson and Stewart. "Unequal Representation to SIJS: State Court Adjudication of One-Parent Cases." 14 July 2014.

¹⁰⁵ Ibid.

¹⁰⁶ See Generally: *H.S.P. v. J.K.* New Jersey State Court. 27 March 2014.

While the general reasoning in these decisions may seem logical at face value, the precedent that they create is dangerous. For example, if there is abuse or abandonment by one caretaker at home, and a child flees because of that abuse or neglect, why would a court feel compelled to send the child back to a situation that is dangerous? Moreover, if the non-abusive parent is *not* in the home country, does this mean some courts would deport children to where they have no one fit to take care of them? Finally, for minors who are reuniting with a parent in the United States, these decisions present a catch-22. Some courts argue that, because the child is safe with one parent, they are therefore ineligible for SIJS. However, the implication of that decision is the denial of the opportunity for the child to legally stay in the United States and be safe with the parent who is with them now. The courts, therefore, illogically justify the denial of SIJS on the fact that the minor immigrant is safe in the U.S.—leaving them at risk to be deported back into danger. In their paper on the inequities of access to Special Immigrant Juvenile Status, Meghan Johnson and Kele Stewart note that these decisions often have “statewide applicability” and can lead to SIJS applicants who would otherwise be eligible for relief to be denied because of narrow, dangerous interpretations of the “one or both” clause.¹⁰⁷

These two cases are especially troubling given data that I collected while observing New York Immigration Court. Of the 50 respondents observed in New York, 37 were with a parent. Furthermore, many of these minors articulated that they planned to seek SIJS relief in the coming months. Although New York courts have taken a more lenient interpretation to SIJS, if these numbers are representative of children in other jurisdictions, up to 75% of minor immigrants may be rendered ineligible for this form of relief depending on the

¹⁰⁷ Johnson and Stewart. “Unequal Representation to SIJS: State Court Adjudication of One-Parent Cases.” 14 July 2014.

definitions that take precedent in their jurisdiction.¹⁰⁸ In areas like New Jersey and Nebraska, children with stories like Angelo's would not qualify for SIJS. In theory, Angelo would be denied SIJS and deported back to an abusive father just because his mother, who is now in the United States, was not abusive. This is problematic, illogical, and indicative of a "haphazard application of SIJS relief across state lines" that directly affects the lives of the minor immigrants who are relying on this statute to escape abuse.¹⁰⁹ Beyond differences in court interpretations, however, the greater implication is that it risks the safety of the minor immigrants who are fleeing mistreatment. As with asylum claims, the family courts that render these decisions recognize the danger that the minor respondents face, yet they deny these minors access to safety in the U.S. because of an overly burdensome interpretation of a statute that was written to protect this population from harm.

In summary, "although SIJS serves as a valuable form of immigration relief for undocumented children in the United States who have been abused, neglected, abandoned, or similarly mistreated," much like with petitions for asylum, there are many questions as to how it will be implemented in practice as the surge of unaccompanied minors begin applying for this form of relief.¹¹⁰ The narrow SIJS definitions adopted in some jurisdictions place a particularly tremendous burden on unaccompanied minors who are reuniting with one parent in the United States, but are fleeing an abusive or neglectful parent in the home country. In these cases, some minors may be deported to a country where there is no one fit to take care of them. Surely this is against the intent of a law written to "assist a limited

¹⁰⁸ See Generally: *Matter of Marcelina M.G. v. Israel S. & In re Mario S.*

¹⁰⁹ Johnson and Stewart. "Unequal Representation to SIJS: State Court Adjudication of One-Parent Cases." 14 July 2014.

¹¹⁰ Junck, Angie. "Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children." Winter 2012. Pg. 61.

group of abused children to remain safely in the country with a means to apply for LPR status.”¹¹¹ Overall, these factors can lead to the unnecessary and unjust removal of unaccompanied minors, possibly back into the hands of abusive caretakers.

Non-Protection-Related Claims: Family Reunification/Opportunity

“I left because I wanted to be with my mother. I miss her a lot. My grandmother mistreated me. She was mean to me. She told me to leave the house, but where was I supposed to go? The only place I could go was here...I couldn’t stand to be there anymore.”

- Oscar, Honduras, Age 12

The final major group of unaccompanied minors coming to the United States is not fleeing significant persecution or abuse in the home country, but instead want to reunite with parents or other family members in this country. Although “family reunification is an important principle governing immigration policy” for U.S. citizens, there is no way for unaccompanied minors to obtain immigration relief solely because they desire to be united with a parent.¹¹² The State allocates at least 480,000 family-based visas yearly, and usually exceeds that number due to complicated federal laws allowing for aliens to be “paroled” into the U.S. outside of family preferences.¹¹³ However, there is no legal way for unaccompanied minors who want to come to the United States to join non-citizen parents, because family-based visas are usually reserved for the immediate relatives of U.S. citizens.

As discussed before, the four ways that unaccompanied minors can receive relief are all predicated on the experience of violence. Further, the two most commonly used forms of relief have stringent interpretations that limit the type of violence that one must have

¹¹¹ *Garcia v. Holder*, 659 F.3d 1261

¹¹² “How the United States Immigration System Works: A Factsheet.” Immigration Policy Center.

¹¹³ *Ibid.*

suffered before being able to be granted relief. Therefore, for minors who are leaving home solely to join family members in the United States, there is no way to achieve legal status. Immigrants like Oscar, who have made the perilous journey because they want to be back in a setting with their father or mother, will either be deported or be forced to live their lives without immigration authorization. This means that they would not be able to legally work in the United States, get financial aid from many schools when applying for college, or even get a driver's license in most states. Indeed, Oscar would have to lead a life underground in the U.S. merely because he wanted to be reunited with his mother.

The Realities of Protection through Statute for Unaccompanied Minors in the United States

Looking back at the opposing responsibilities that the State has in both supporting minors through the notion of *parens patriae* and strengthening border security, it is clear that our courts interpret immigration statutes in a way that prioritizes strict rules for entrance into the U.S. over protecting minors who come seeking help. The fact that our courts recognize that harm is happening to minors at home, yet still elects to send them back to that harm—whether it be because of a failed asylum request, the removal of a minor back to an abusive caretaker, or a lack of laws that protect immigrants looking to leave economic hardship or reunify with family—shows that the safety of unaccompanied minors, while written in procedural protections, is not prioritized in outcome.

In fact, the protections that have been afforded to unaccompanied minors, ranging from expedited processing and placement in the least restrictive detention settings to child-sensitive courtroom procedures and leniency in deadlines, are necessary and important but do nothing to *substantively* protect Alfonso, Angelo, and Oscar. They are necessary to make the process of going through the immigration system less demanding,

but are insufficient in changing the ultimate resolution for these three boys, whose stories represent the vast majority of minor immigrants fleeing from Mexico and Central America. What, then, does this say about how our country is responding to this population? What are the realities of the safeguards that this nation has put forward for this wave of child refugees? Indeed, as it currently stands, this is a system of empty protections, because the statutes that dictate who stays and who goes either do not apply to the violence occurring to minor immigrants from Mexico and the Northern Triangle or do not recognize reasons outside of the experience of violence as valid for coming to the U.S.

In a panel at New York Law School, Judge Virna Wright, the judge whom I observed for five months in immigration court, articulated the conflict between the rule of law and an urge to protect minor immigrants. She states,

“Now, with respect to issues of law, which include questions of eligibility for relief, those are governed by the INA and insular regulations... The concept of the best interest of the child does not negate the statute and cannot provide a basis for relief that is not sanctioned by the law. Rather, for me as a judge, the concept of the best interest of the child is something I would use at my discretion to make sure that a child appropriate environment is in place...[I] endeavor to meet the best interests of the child through the process.”

It is not enough for us to merely make the process fair. This research shows that there are major questions that remain to be answered as to how exactly unaccompanied minors can receive relief from deportation under the current system. In New York, unaccompanied minors who arrived during the “surge” in the summer of 2014 will begin to

have final hearings in May 2015.¹¹⁴ It is unfair if these children are ordered deported before we have done something to answer these impending questions. If this nation is truly committed to protecting unaccompanied minor immigrants, we must move beyond procedural protections and remedy the available forms of relief from deportation that this population must use in the courtroom. Further, we must ensure that minors have the best chance at meeting the strict standards that our immigration laws demand. This means guaranteeing that every unaccompanied minor immigrant has legal representation in court. Only with both of these changes can minor immigrants have a fair chance at meeting the standards necessary to stay in the United States.

Appointed Legal Representation

Just as we must reform the statutes used to gain relief from deportation, we must also solidify legal representation for minor immigrants. Indeed, any reforms to immigration statutes will be meaningless without ensuring that representation is available. The opposite is also true. Legal representation without fair statutes is equally as meaningless. Therefore, both of these changes are necessary to make substantive outcomes fair for unaccompanied minors.

According to the U.S. Constitution, “in all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense.”¹¹⁵ However, “detention and deportation proceedings are civil, not criminal,” and thus there is no right to a free attorney for any immigrant in removal proceedings, including unaccompanied minors.¹¹⁶ Therefore, though it is necessary to reform the statutes that ultimately can grant residency

¹¹⁴ Panel Discussion with Judge Wright. New York Law School. 10 February 2015.

¹¹⁵ U.S. Constitution, 6th Amendment.

¹¹⁶ Tebo, Margaret. “Locked Up Tight.” Journal of the ABA. November 2000.

for minor immigrants, it is also extremely important to ensure that each unaccompanied minor has representation in immigration court. Indeed, research has shown that without representation in immigration proceedings, there is almost no chance of receiving a positive outcome in court.¹¹⁷

Numerous news outlets and legal scholars have questioned the availability of legal counsel for minors in immigration court. Since 2005, legal advocate Rachel Bien has argued that “INS Guidelines do not guarantee that child asylum seekers will receive legal counsel.”¹¹⁸ Furthermore, recent articles about the representation of unaccompanied minor immigrants from Mexico and Central America have cited that “between 70% and 90% could go unrepresented” in U.S. courts.¹¹⁹ Even Congress has acknowledged this discrepancy, as Democrats have argued for legal representation for minors because “statistics demonstrate that applications for asylum are four times more likely to be granted when represented by counsel.”¹²⁰ Thus, though there are numerous safeguards in place for immigrant minors, we must ensure that access to legal counsel is of paramount concern. While it is necessary to overhaul the statutes that unaccompanied minors use in court, it is not sufficient without also ensuring that there is mandatory government sponsored appointment of legal representation for minor immigrants.

The TVPRA in 2008 implicitly acknowledged that our legal system has a problem with the way that it handles cases of minor immigrants. The statute states that, “to the greatest extent possible” the government will “make every effort to utilize the service of

¹¹⁷ Adams, Matt. “Advancing the Right to Counsel in Removal Proceedings.” *Seattle Journal for Social Justice*. 2010

¹¹⁸ Bien, Rachel. “Nothing to Declare But Their Childhood.” *Journal of Law and Policy*. 2005.

¹¹⁹ Castillo, Mario. “For Immigrant Children, Fate in the U.S. a Roll of the Dice.” *CNN*. 07 October 2014.

¹²⁰ Congressional Record on 22 May 2013. Pg. S7026.

pro bono counsel who agree to provide representation to such children without charge.”¹²¹

In my interview with Meghan Johnson, Managing Attorney for ProBar Representation Project in Harlingen, Texas, she discussed how the government’s interpretation of this provision has been to “make sure that there is a legal services provider who can access the children while they are detained, give them ‘know your rights’ [presentations] and legal screenings, and provide limited representation” in court. In her capacity at ProBar, Meghan noted that the organization received federal funding and fulfilled these duties by “appear[ing] as friends of the court to help the child communicate with the judge” and providing legal screenings for minors immigrants. However, the organization “will not enter as an attorney” in most cases.¹²² To provide for these services, the federal government granted \$4.2 million dollars in funding to agencies, like ProBar, that provide this type of assistance, and will provide a further \$4.8 million dollars in FY2015.¹²³ However, this does not change the fact that there is no guarantee that *every* unaccompanied child will receive representation.

While the fact that the federal government is providing money to organizations that represent minor immigrants implies that the State believe minors need legal protection, the phrasing of the TVPRA that mandates the government provide representation “to the greatest extent possible” leaves a loophole for those children who cannot find free legal services. Thus, we are left with the same pattern seen with the statutes of relief. There is creation of some protections to provide attorneys for minor immigrants, but there is no

¹²¹ TVPRA, 2008. Pg. 5079.

¹²² Personal Interview with Meghan Johnson. ProBar Rio Grande Valley. 30 December 2014.

¹²³ Zapor, Patricia. “Feds Grant 4.2 Million in Funds for Legal Aid to Unaccompanied Minors.” National Catholic Reporter. 03 October 2014.

guarantee that goes far enough to provide what this population needs—mandatory legal representation for all unaccompanied minor immigrants.

In practice, the way that the government has defined its duty in providing legal services to minor immigrants is highly dependent on the non-profit network in the region where the child is located, leaving room for inconsistencies to occur depending on location. For example, in New York, a vast network of non-profit agencies have partnered to ensure that nearly all unaccompanied minors in immigration court appear with legal representation after initial hearings. One of these is Safe Passage, which prides itself in training 300-400 pro bono attorneys to provide free representation for minors in immigration court.¹²⁴ In my interview with Claire Thomas, a staff attorney with the Safe Passage Project, she articulated that the project works with KIND (Kids in Need of Defense), Legal Aid Society, Make the Road NY, Catholic Charities, and other organizations to ensure that there will always be representatives in the courthouse to help minors find representation. Indeed, in my time observing this court, every child was directed to these nonprofits, so that they could connect with one of the organizations and find a free attorney. Each respondent was also given a list of 24 “free or low cost” organizations by the judge with phone numbers that they could call to find out more information about obtaining representation.¹²⁵ Many respondents were even physically escorted to 12th floor holding rooms so that they would feel more comfortable approaching the legal staff that was available. All of this was done in the context of New York Immigration Court and the

¹²⁴ Personal Interview with Claire Thomas. Staff Attorney at Safe Passage Project. Adjunct Professor at New York Law School. 24 November 2014.

¹²⁵ This document is entitled “Free Legal Services Providers List” and was last updated in October 2014. This list is mandated by the EOIR and was given to every respondent that did not have representation that I observed in immigration court.

impressive coalition building between numerous non-profit organizations that worked together to ensure that there were personnel present daily. Finally, local government was also a factor in the success of this initiative, as the New York City Council allocated \$1.9 million dollars to organizations that provide representation for minor immigrants.¹²⁶

However, Claire also acknowledged that this type of service was specific to New York City and has not happened everywhere else. Indeed, she states that “in Georgia, when children return without an attorney, judges are ordering them removed on their second appearance even though they are saying they want more time to find” one.¹²⁷ In locations like these, there may not be a robust nonprofit legal infrastructure to provide pro bono representation for minors nor financial support from local government to fund these programs beyond what the federal government provides. Thus, no matter how the government helps financially, legal counsel for immigrants can only be successful to the extent that nonprofit entities in the area are able to provide that service.

My time in Harlingen Immigration Court illustrated this exact problem. Harlingen Immigration Court is located in the Rio Grande Valley in Deep South Texas. According to U.S. Customs and Border Protection, of the 21,403 unaccompanied children apprehended between October 1, 2014 and February 28, 2015, 14,043 (66%) passed through the Rio Grande Valley region.¹²⁸ However, Harlingen Immigration Court ranks lowest in percentage of respondents who have legal representation in the courtroom. In fact, Syracuse University reports that “only 6% of the 1,968 children’s cases pending before the Harlingen

¹²⁶ “NYC Council...Announce New 1.9 Million Unaccompanied Minor Initiative.” Press Release. The Council of the City of New York Office of Communications. 23 September 2014.

¹²⁷ Personal Interview with Claire Thomas. Staff Attorney at Safe Passage Project. Adjunct Professor at New York Law School. 24 November 2014.

¹²⁸ “Southwest Border Unaccompanied Alien Children.” U.S. Customs and Border Protection

Immigration Court were represented” based on numbers that were updated on October 31, 2014. In contrast, major courtrooms such as New York, Philadelphia, and Boston had between 45 and 55 percent representation in the courtroom during this same period.¹²⁹

On Thursday, January 8, 2015, I observed Master Calendar proceedings at the Harlingen Courthouse. As I waited outside for the court to open, I noticed several minor immigrants walk in with two caretakers. After entering, two other women who were in the waiting room went up to the immigrants and relayed that they were representatives from ProBar and began to explain to them in Spanish that, while they were not their lawyers, they would help them answer questions for the judge that day. In front of the court, one of the ProBar representatives announced herself as serving as a “Friend of the Court” to help the minor immigrants respond to whatever the judge needed answers to. The respondents that day ranged from five to 14 years of age, all asked for more time in order to find an attorney, and all were dismissed from court until either March 11 or March 24, 2015.¹³⁰

In contrast to what was available in New York Immigration Court, the court in Harlingen had very little to offer to minors who were seeking legal representation. Although the government was meeting its standard of providing legal assistance to minor immigrants to the best of its ability, none of the minors actually had legal representation in front of the judge. Indeed, it was clearly explained that the ProBar representatives were *not* the lawyers of the respondents. Instead, they were only there to help and would not follow these cases to their conclusion. Furthermore, there was no robust system of non-profit entities working together to provide representation to the immigrants, nor did the judge

¹²⁹ “Representation for Unaccompanied Children in Immigration Court.” TRAC. Syracuse University.

¹³⁰ This ethnographic description is from my experience in Harlingen Immigration Court on 8 January 2015.

offer to help any of the immigrants find free or low cost representation. Overall, my experience in this courtroom illustrated that there can be very drastic differences in the potential to garner legal representation, and this difference can be solely based on the location in which the proceedings occur. This, in turn, can affect the case's outcome, as it advantages minor respondents who are, by chance, in a location in which they are able to get legal representation and thus better represent why they should stay in the U.S.

Lastly, attorneys have also affirmed the need for unaccompanied minors to have legal representation in removal proceedings. In my interview with Columbia law student Demi Lorant who represents minor immigrants in immigration court, she noted the ways in which cases for unaccompanied minors are particularly burdensome, even for trained attorneys. For example, she states that in asylum cases, "there are always evidentiary issues because courts want to see corroborating evidence" to expand on the client's credibility. This evidence, however, is difficult to track down because things like "police reports from Central and South America are frequently damaged or destroyed or cannot be released to us." Finally, she notes that just making legal arguments for a child as opposed to an adult is difficult because "children are just less visible in the community," which makes it harder to prove that they were part of any persecuted group in need of relief.¹³¹

Overall, Demi illustrated issues that were difficult for her to tackle, even as a trained lawyer. Imagine, then, the challenges an unaccompanied minor would have in representing himself or herself in court. Indeed, because the U.S. legal system is conducted in English, on the most fundamental level there would be no way for minor immigrants—the vast majority of whom do not speak English—to successfully navigate even just the paperwork

¹³¹ Personal Interview with Demi Lorant. Columbia Law Student. 10 November 2014.

necessary without some assistance. To this end, Demi agreed that there would be no way for minors to successfully represent themselves in court without help.¹³²

To provide concrete examples about the difficulty of not having legal representation, let's examine how a child would apply for asylum. Firstly, asylum forms must be completed in English, as "forms completed in a language other than English will be returned."¹³³

Without legal help, how can one expect a minor to 1) know that all forms must be completed in English and 2) be able to do that for themselves? Furthermore, the complicated nature of asylum requirements places a lot of pressure on applicants. Not only do they have to testify about potentially cruel memories, but they also often face a legal system that has attitudes of "suspicion, condescension, and a patriarchal perspective that denies the significance of children as political agents..."¹³⁴ In my interview with Demi, she discusses these attitudes and the burdens that come with asylum evidence. She states, "[the child] tells a story and they say 'okay...and if your story is true then you should be granted asylum, but I can't just take your word for it so we need more evidence'." While this burden is present in all cases, it is especially burdensome for child applicants who may not seem credible in front of the courts. For example, Demi described how time was often a factor of confusion during conversations with younger clients. She explained that, in one interview, her client would account a week for time traveled between home and the border, while in another it would be a month. Even with an attorney, this discrepancy is difficult to explain to a judge. Without an attorney, however, these discrepancies may not be explained at all.

¹³² Ibid.

¹³³ See Generally: *Form I-589, Application for Asylum and for Withholding of Removal*.

¹³⁴ Bhabha, Jacqueline. *Child Migration & Human Rights in a Global Age*. 2014. Pg. 204-205.

This would certainly adversely affect an asylum claim, especially in front of a judge who may not take into account the cognitive differences of minors.

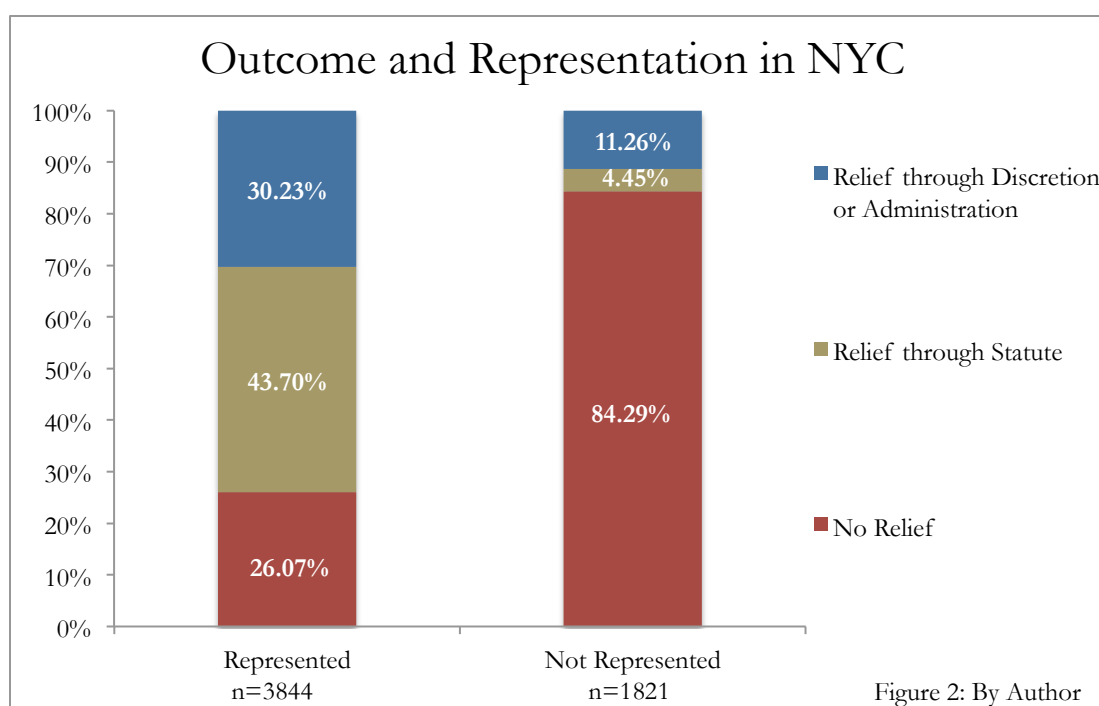
It is essential, therefore, that *every* unaccompanied minor have representation. In *J.E.F.M. v. Holder*, the ACLU is suing the United States to get appointed legal representation for all minor immigrants. In their complaint, they contend that, though “the Department of Homeland Security is represented by a trained lawyer who argues for the child’s deportation,” many times children stand alone in responding to arguments against them. Furthermore, any “right” to make an argument on behalf of oneself “is meaningless [for children] because [they] are not competent to exercise” this right. Finally, “both the constitution and the immigration laws guarantee all children the right to a full and fair removal hearing...but children cannot receive that fair hearing without legal representation.”¹³⁵ The complaint goes on to articulate that, while the courts have allowed juvenile citizens to receive representation in civil *and* criminal cases because “juvenile[s] ...need the assistance of counsel to cope with problems of law,”¹³⁶ courts have not allowed this same protection for minors in removal proceedings, which carry the penalty of deportation. Perhaps most telling of the legal situation for minor immigrants is that all of the complainants in the suit were unaccompanied minors who had been unable to find legal representation despite “a remarkable network of pro bono service providers, working in concert with the government.”¹³⁷

¹³⁵ *J.E.F.M. v. Holder*. United States District Court for the Western District at Seattle. 01 December 2014.

¹³⁶ *In re Gault*. 387 U.S. 1 (1967).

¹³⁷ *J.E.F.M. v. Holder*. United States District Court for the Western District at Seattle. 01 December 2014.

Data collected from the Executive Office of Immigration Review (EOIR) confirms many of these assertions. Indeed, at New York Immigration Court, minor immigrants who were unrepresented between 2005 and 2014 were more than three times more likely to receive an order of removal (see Figure 2). Furthermore, while minors who had representation found relief through immigration statutes 43% of the time, only 4.5% of minors who were not represented found relief through the same statutes during the same time period. These numbers stand as a testament to the necessity of legal representation for minor immigrants, as they show that not providing mandatory legal representation for this population is akin to not giving them a chance to fairly plea their case in court.¹³⁸



¹³⁸ I am using data gathered from the TRAC database at Syracuse University. In coding this data, I used three categories: “No Relief”, “Relief through Statute”, and “Relief through Discretion/Administration.” “No Relief” contains all minors ordered removed or asked to voluntarily depart, “Relief through Statute” only includes minors who had a positive outcome through utilizing particular statutes of relief, “Relief through Discretion or Administration” includes minors who had a positive outcome in court either because of discretion by the government or an administrative error. In calculating these percentages, I did not include the ~60% of cases that were still pending at this court location.

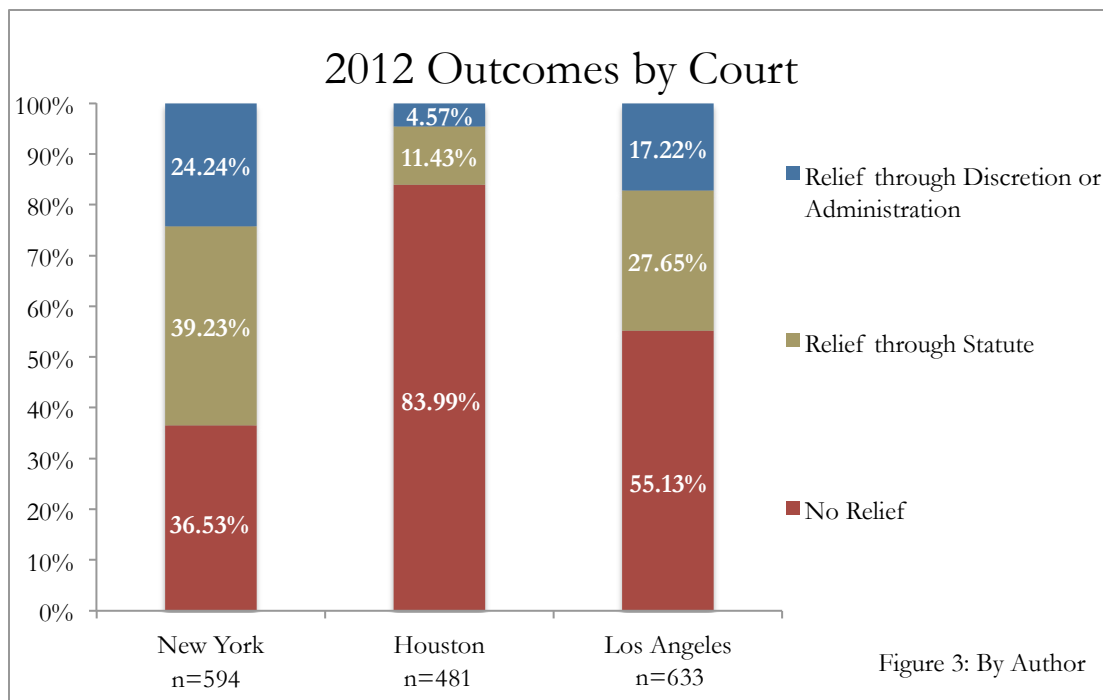
In summary, it is not enough for the United States to leave it up to local nonprofits to organize themselves in order to represent unaccompanied minors who are going through immigration court. Nor is it fair for the government to merely provide monetary support to organizations that can serve as a “Friend of the Court” for minor immigrants. Instead, as the ACLU argues, we must follow our own immigration guidelines that dictate a fair trial by granting *every* minor respondent legal representation. Only in conjunction with this protection, can the legislative reforms discussed before have their fully intended effects on the immigration outcomes for unaccompanied minors from Mexico and Central America.

Interaction between Pathways for Relief and Legal Representation

The interaction between narrow pathways for relief from deportation and inconsistencies of legal representation for minor immigrants can have vast consequences on immigration outcomes for this population. Although the great majority of cases for unaccompanied minors have not reached final hearings, initial outcomes show the inability of our laws to protect minors from Mexico and Central America. Indeed, according to data from the Transactional Records Access Clearinghouse (TRAC) at Syracuse University, a source of “independent and nonpartisan information about U.S. federal immigration enforcement,” the failure of the government to protect unaccompanied minors is evident.¹³⁹ In comparing outcomes from 2012 in New York, Houston, and Los Angeles, vast irregularities in outcomes for minor immigrants are apparent.¹⁴⁰

¹³⁹ TRAC Immigration. Online Database. Accessed 22 February 2015.

¹⁴⁰ I am using 2012 data gathered from the TRAC database. I coded the data the same as the data above by using the categories “No Relief,” “Relief through Statute,” and “Relief through Discretion or Administration.” In calculating these percentages, I did not include the ~40% of cases that were still pending in 2012.



This data is troubling, as it shows that 1) the majority of outcomes in Houston and Los Angeles result in no relief for minor immigrants; 2) in New York, though outcomes are more positive, 25% of cases end with “relief through discretion or administration,” suggesting that this court may just be more lenient; and 3) “relief through statute” has vastly different outcomes in the three areas. This illustrates how different interpretations and varying degrees of representation can lead to inconsistencies in receiving relief from deportation depending on jurisdiction. Although approximately 40% of cases are still pending from proceedings that began in 2012, the data paints a clear picture of what is happening to minor immigrants in U.S. courts, and affirm that the “protections” this nation has provided for unaccompanied minors are not adequate enough to protect this immigrant group from deportation. In fact, the laws that the State has put into action seem to only make the process of going through immigration court easier for unaccompanied minors, but do not really protect this population. Overall, these numbers confirm that the system that adjudicates cases for minor immigrants is by no means built to help minors

escape the violence, deprivation, and abuse that they are fleeing. Instead, in many instances, the system sends them back to the dangers that they are running from.

The amount of variation in this data depending on the courtroom location in which the proceedings occur is alarming. These numbers show that, despite the fact that the vast majority of respondents come from the same four countries, present similar arguments for staying in the United States, and petition around the same time, a minor immigrant can be more than twice as likely to be deported in Houston than in New York, and a minor immigrant in New York is four times more likely to receive relief through statute than a minor immigrant in Houston. In analyzing these facts, we must remember that these discrepancies occur because of *both* ineffectual statutes and inconsistent representation. For context, while my ethnography showed a vast network of legal nonprofits providing representation for minor immigrants in New York City, in Houston over 60% of minors went unrepresented in 2012.¹⁴¹ Indeed, in order to fix these discrepancies it is not sufficient to tackle one issue. Both changes in substantive law *and* in the ability to garner legal representation must happen before we can see some reversals in these numbers.

Conclusion: Meaningful Reform through Legislation and Legal Representation

This research paper underscores the “significant gaps in the existing protection mechanisms” for minor immigrants by painting a picture of what is truly happening to this population in courtrooms across the country.¹⁴² Despite being a signatory to international agreements that discuss the rights of minors,¹⁴³ and working to protect children in

¹⁴¹ TRAC Immigration. Online Database. Accessed 13 April 2015.

¹⁴² “Children On The Run.” UNHCR, July 2014. Pg. 11.

¹⁴³ “Convention on the Rights of the Child.” United Nations. 20 November 1989.

domestic courts,¹⁴⁴ the United States fails to *substantively* protect unaccompanied minors seeking to obtain relief from deportation. Instead, minor immigrants face overly narrow immigration statutes and do so without any guarantee of legal representation on their behalf. Furthermore, the combination of these factors creates vast inconsistencies in outcome for unaccompanied minors in court. In order to remedy these inconsistencies, reforms to immigration statutes and a guarantee from the U.S. to provide mandatory legal representation to all unaccompanied minors must be enacted.

While unaccompanied minor immigrants can come from anywhere, the vast majority is from Mexico and Central America. They flee gang violence and instability in their home countries and search for a better life in the U.S. Once they reach the United States however, they deal with a system that is not meant to help them. They do not receive legal representation; they have to deal with laws that were not written with their situations in mind; and many are deported because this system fails to protect them in the way that it should. Each and every day that the U.S. fails to address this issue, therefore, furthers the United States' history of oppression and racism through immigration laws that adversely affect our neighbors to the south. Further, we must not forget that many of the minors fleeing Mexico and the Northern Triangle do so because of the economic dependence, political violence, imperialism, and intervention in Latin American affairs perpetuated by the United States for more than a century.

For all of these reasons, the U.S. does not only have a moral obligation to help these immigrants, it also has a legal obligation through *parens patriae* to protect this population beyond the limited procedural safeguards that are currently in place. The status quo has

¹⁴⁴ See the legal notion of *Parens Patriae*.

resulted in vast discrepancies in outcomes for unaccompanied minor immigrants, and does not adequately allow this population to have a fair chance in the courtroom. In thinking of solutions for this problem, I propose that the U.S. begin by giving all unaccompanied minor immigrants currently in the United States from Mexico, Guatemala, El Salvador, and Honduras Temporary Protective Status (TPS).

Temporary Protective Status is a designation given by the USCIS for residents of countries that are subject to conditions “that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.”¹⁴⁵ According to USCIS procedure, the Secretary of Homeland Security can designate a country to be eligible for this form of temporary relief if any of the following conditions apply: there is ongoing armed conflict, an environmental disaster or epidemic, or another “extraordinary circumstance or temporary condition.”¹⁴⁶ Furthermore, anyone under the protection of this status cannot be deported, can obtain employment authorization, and can still apply for other status adjustments that they may qualify for.¹⁴⁷ Currently, both El Salvador and Honduras are listed as countries whose nationals have received TPS in the U.S. at some point in the past. Unfortunately, however, this relief does not apply to the current wave of unaccompanied minors, because in order for someone from one of these countries to qualify for TPS they must have continuously resided in the U.S. since March 2001 for Honduras or December 1998 for El Salvador.¹⁴⁸

Whereas many unaccompanied minor immigrants currently fleeing Mexico and the Northern Triangle are doing so because of violence from gang and cartels, and whereas the

¹⁴⁵ “Temporary Protected Status.” U.S. Citizenship and Immigration Services.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ “Temporary Protective Status Designated Country: El Salvador; Honduras.” USCIS.

unique social identity of this population should be seen as an “extraordinary circumstance” given the inability of many children to escape abuse or persecution and provide for themselves, unaccompanied minors coming from these areas should be eligible for TPS. In turn, the protections this status confers upon minor immigrants will provide time and an incentive for lawmakers to make long-term changes. These changes should include:

1. Changing the “Contiguous Country” provision in the TVPRA so that unaccompanied minors from Mexico are allowed, just as any other minor immigrant, to present their case in front of a judge or asylum officer and not just a border patrol agent.
2. Ensuring that there is mandatory legal representation for all unaccompanied minor immigrants in removal proceedings. This can be done without the intervention of Congress if the courts extend the same protections that they give to citizen juveniles to non-citizen juveniles in immigration court.
3. Beginning legislative efforts to update the narrowly construed asylum definition. Changes should alter the definition to include modern reasons why refugees flee to the U.S. and should update the protected classes mentioned in the definition accordingly—especially as they pertain to “youth” as a potential protected class.
4. Legislative modifications to SIJS provisions that will ensure that all minors who fear abuse or neglect by *either* parent can be protected in the United States. This would take away any ambiguity for judges adjudicating these claims.

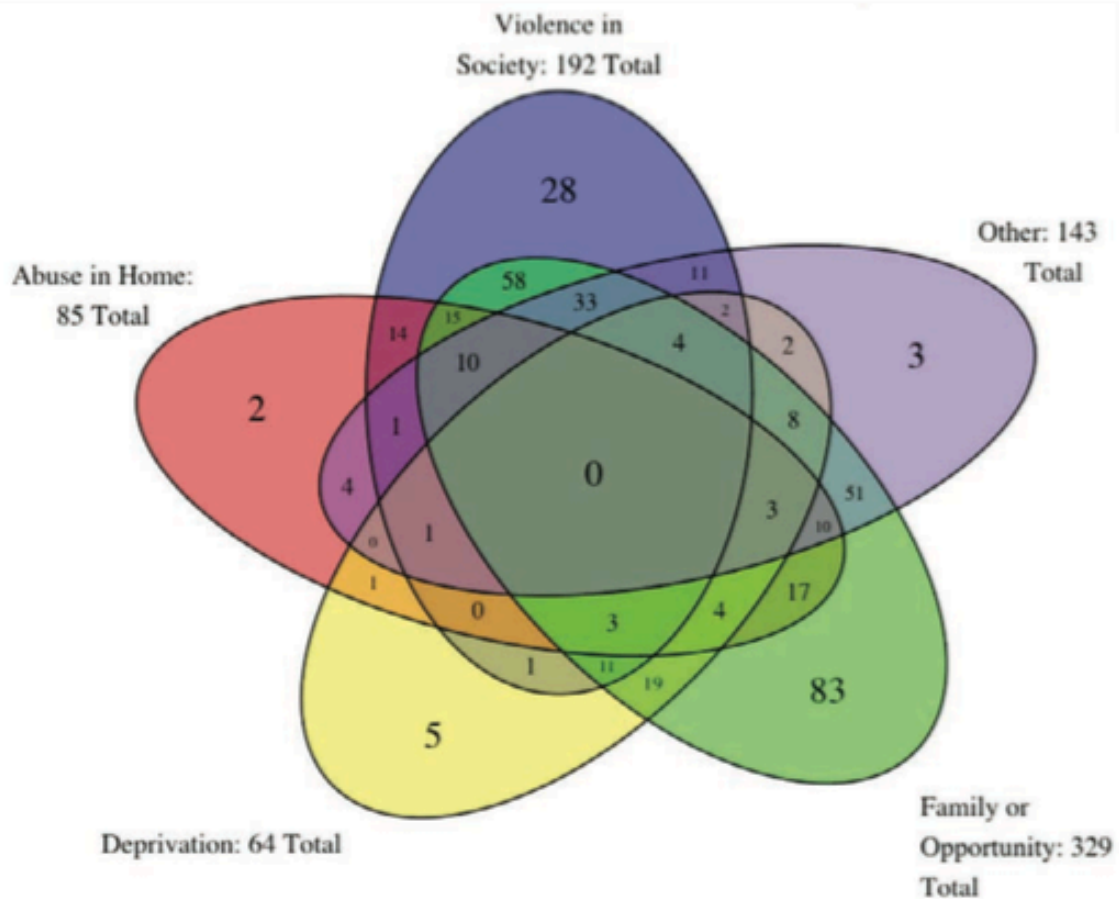
These are all feasible ways that the United States can better protect unaccompanied immigrant minors. Now the country needs to take the steps to do so. Starting this process by granting TPS is the most effective way to ensure that unaccompanied minors are not

sent back to dangerous situations and allow for these changes to happen in a thoughtful manner. Currently, the way that the U.S. immigration system treats unaccompanied minor immigrants is pseudo-protective—there are some procedural safeguards in place, but, as I have shown, the outcomes are anything but positive. The way to rectify what is currently happening to unaccompanied minor immigrants, therefore, is to give them refuge in the short term, while continuing to fight for mandatory legal representation and changes to immigration statutes that reflect the modern reasons refugees come to the United States in the long term. Only after both of these changes will unaccompanied minors have a fair chance at meeting the requirements to stay in the U.S. Without these changes, however, this nation will only continue to allow minors to be deported back to the dangers they flee from or will force them to become undocumented in a country that has already shown that it will not fight for their protection.

Appendix

Exhibit 1

Children's Reasons for Leaving Home



- This graph was taken from the UNHCR Report "Children on the Run." It exhibits the various and interconnected reasons minor immigrants are leaving Mexico and Central America.

Works Cited

- Adams, Matt. "Advancing the Right to Counsel in Removal Proceedings." *Seattle Journal for Social Justice* (2010): Web.
- "An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Alien Minors." U.S. House of Representatives, 25 June 2014. Web.
- Aridjis, Homero. "Migrants Ride a 'Train of Death' to Get to America & We're Ignoring the Root of the Problem." *The Huffington Post*, 7 Sept. 2014. Web.
- Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution, USCIS Asylum Basic Officer Training (2009). Print.
- Bhabha, Jacqueline. *Child Migration & Human Rights in a Global Age*. Princeton, NJ: Princeton UP, 2014. Print.
- Bien, Rachel. "Nothing to Declare But Their Childhood." *Journal of Law & Policy* (2005): Web.
- Bunker, Robert. *Criminal Insurgencies in Mexico and the Americas: The Gangs and Cartels Wage War*. London: Routledge, 2013. Print.
- Byrne, Olga, and Elise Miller. *The Flow of Unaccompanied Children through the Immigration System*. Rep. Vera Institute, Mar. 2012. Web.
- Carcamo, Cindy. "In Honduras, U.S. Deportees Seek to Journey North Again." *Los Angeles Times*, 16 Aug. 2014. Web.
- Casper, Benjamin, Regina Germain, and Ilana Greenstein. *The Convolution of Particular Social Group Law*. Tech. American Immigration Lawyers Association, 2011. Web.
- Castillo, Mario. "For Immigrant Children, Fate in U.S. a Roll of the Dice." *CNN*. 7 Oct. 2014. Web.

Challenges in the Adjudication of Petitions for Special Immigrant Juvenile Status. Rep.

National Immigrant Justice Center, 18 July 2013. Web.

Children at the Border: The Screening, Protection, and Repatriation of Unaccompanied

Mexican Minors. Rep. Appleseed, 2011. Web.

Children on the Run. Rep. UNHCR, July 2014. Web.

Congressional Record, 22 May 2013 (testimony of Edward Kennedy). Print.

Convention on the Rights of the Child, United Nations (1989). Print.

Garcia v. Holder. United States Court of Appeals, Ninth Circuit. 2 Nov. 2011. Print.

González, Juan. *Harvest of Empire: A History of Latinos in America*. New York: Viking, 2000. Print.

Guidelines for Children's Asylum Claims, USCIS (1998). Print.

Guidelines for Children's Asylum Claims, USCIS (2009). Print.

Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children, U.S. DOJ (2007). Print.

Homeland Security Act (2002). Print.

"How the United States Immigration System Works: A Fact Sheet." *Immigration Policy Center*. 1 Mar. 2014. Web.

H.S.P. vs. J.K. New Jersey State Court. 27 Mar. 2014. Print.

Immigration and Nationality Act, § 1101. Print.

Immigration and Nationality Act, § 1158. Print.

Immigration Court Practice Manual, U.S. DOJ (2008). Print.

Immigration Options for Undocumented Immigrant Children. Rep. Immigrant Legal Resource Center, July 2013. Web.

Immigration Relief for Vulnerable Populations. Rep. USCIS, 2011. Print.

In Re Erick M. Supreme Court of Nebraska. 14 Sept. 2012. Print.

In Re Gault. U.S. Supreme Court. 1967. Print.

In Re Mario S. Family Court, Queens County. 21 Nov. 2012. Print.

"Interview with Claire Thomas." Telephone interview. 24 Nov. 2014.

"Interview with Demi Lorant." Personal interview. 10 Nov. 2014.

"Interview with Meghan Johnson." Telephone interview. 30 Dec. 2014.

"Interview with Official at the Honduran Embassy." Telephone interview. 9 Jan. 2015.

J.E.F.M. v. Holder. United States District Court for the Western District at Seattle. 01 Dec. 2014. Print.

Johnson, Meghan, and Kele Stewart. "Unequal Representation to SIJS: State Court Adjudication of One-Parent Cases." *American Bar Association*. 14 July 2014. Web.

Junck, Angie. "Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children." *Juvenile and Family Court Journal* 63.1 (2012): 48-62. Web.

Lastra, Pablo. "Who Counts as a Refugee in US Immigration Policy-and Who Doesn't." 11 Aug. 2014. Web.

Matter of Acosta. Board of Immigration Appeals. 01 Mar. 1985. Print.

Matter of Marcelina M.G. v. Israel S. Supreme Court of the State of New York. 23 Oct. 2013. Print.

Matter of M-E-V-G-. Board of Immigration Appeals. 7 Feb. 2014. Print.

Matter of S-E-G-. Board of Immigration Appeals. 30 July 2008. Print.

Mauricio Caldiviezo-Galdamez v. Attorney General of the United States. U.S. Court of Appeals for the Third Circuit. 3 Feb. 2010. Print.

New York City Council. *NYC Council...Announce New 1.9 Million Unaccompanied Minor Initiative*. 23 Sept. 2014. Web.

Ngai, Mae. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton, NJ: Princeton UP, 2004. Print.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, United Nations (2000). Print.

Pizzey, Natasha. "Forgotten on 'La Frontera': Mexican Children Fleeing Violence Are Rarely Heard." WOLA, 22 Jan. 2015. Web.

Rempell, Scott. "Credible Fears, Unaccompanied Minors, and the Causes of the Southwestern Border Surge." *Chapman Law Review* (2015): Web.

"Response to the Influx of Unaccompanied Alien Children Across the Southwest Border." *Presidential Memorandum*. The White House, 2 June 2014. Web.

Román, Ediberto. *Those Damned Immigrants: America's Hysteria Over Undocumented Immigration*. Print.

Santosky v. Kramer. 455 U.S. 745. 24 Mar. 1982. Print.

SIJS: A Step-By-Step Guide for Safe Passage Volunteer Attorneys. Rep. Safe Passage Immigration Project, 23 Nov. 2014. Web.

"Southwest Border Unaccompanied Alien Children." *USCBP*. Web.

Steinbock, Daniel J. "The Admission of Unaccompanied Minors to the U.S." *Yale Law and Policy Review*, 1989. Web.

Syracuse University. Representation for Unaccompanied Children in Immigration Court.

Raw data.

Tebo, Margaret. "Locked Up Tight." *Journal of the American Bar Association* (2000): Web.

"Temporary Protected Status Designated Country: El Salvador." *USCIS*. Web.

"Temporary Protected Status Designated Country: Honduras." *USCIS*. Web.

"Temporary Protected Status." *USCIS*. Web.

The Time Is Now. Rep. KIND, Feb. 2013. Web.

Trafficking Victims Protection Reauthorization Act (2008). Print.

A Treacherous Journey. Rep. KIND, Feb. 2014. Web.

The United States Unaccompanied Refugee Minor Program. Rep. USCCB, 2013. Print.

U.S. Constitution, § 6th Amendment. Print.

Wright, Virna. "Panel on the Status of Minor Immigrants in New York." New York Law School. 10 Feb. 2015. Address.

Zapor, Patricia. "Feds Grant 4.2 Million in Funds for Legal Aid to Unaccompanied Minors." *Catholic National Reporter*. 3 Oct. 2014. Web.